(24,371)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 627.

THE MANILA INVESTMENT COMPANY, THE TACONY TRUST COMPANY, ET AL., APPELLANTS,

vs.

PARK TRAMMELL ET AL., AS TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 16, 1914.

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1 In the District Court of the United States for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY et als.
vs.
ALBERT W. GILCHRIST et als.

Bill to Enforce Trust, etc.

To the Honorable James W. Locke, Judge of the United States District Court for the Southern District of Florida; in Chancery:

Your orators, Manila Investment Company, a corporation created under the laws of the State of Nevada, and a citizen of said State of Nevada, and duly empowered to do business in the State of Florida, also Tacony Trust Company, a corporation created under the laws of the State of Pennsylvania, Henry Disston and E. F. Steck, also citizens of said State of Pennsylvania, and said Tacony Trust Company, Henry Disston and E. F. Steck suing as Trustees under the last will and testament of Hamilton Disston, deceased late a citizen of said State of Pennsylvania, duly qualified as such Trustees of said will under an order of the Registrar of Wills of the County of Philadelphia in said State of Pennsylvania, bring this bill against Albert W. Gilchrist, Park Trammell, William V. Knott, W. A. McRae, and J. C. Luning, as Trustees of the Internal Improvement Fund of the State of Florida, said defendants five in number last named all being citizens of said State of Florida, residing at Tallahassee, in the Northern District of Florida, and being respectively, Governor, Attorney General, Comptroller, Commissioner of Agriculture and Treasurer of said State of Florida, and by reason thereof being members of said Board of Trustees of said Internal Improvement Fund; also against Richard J. Bolles, a citizen of the State of Colorado, residing at Colorado Springs, in said State of Colorado; William O'Brien also a citizen of the State of Colorado, residing at Denver, in said State of Colorado, John E. Andrus, a citizen of the State of Florado, residing at Jack-

2 sonville, in said State of Florida; Florida Everglades Land Company, a corporation created under the laws of the State of Florida; P. A. Vans Agnew, a citizen of the State of Florida, residing at Kissimmee, in the County of Osceola, in this Southern District of Florida; J. M. Barrs, a citizen of the State of Florida, residing at Jacksonville, in this Southern District of Florida; Nathan P. Bryan and Julia S. Bryan, his wife, also citizens of said State of Florida, residing at the City of Jacksonville, aforesaid; and thereupon your orators complain and say:

1. That previous to the year 1889 there was duly incorporated under the laws of the State of Florida, a corporation named The St. Cloud Sugar Belt Railway Company, hereinafter referred to as the Railway Company, and was duly authorized to construct, main-

tain and operate a line of railroad from Kissimmee in the County of Osceola, State of Florida to Runnymede, in said County of Osceola, and ten miles and more of said railroad were constructed and in operation previous to the 31st day of May, 1889; that on said day last mentioned the Legislature of said State of Florida had passed an act, approved that day, being Chapter 3996, (Number 151) of the Laws of Florida, under Section 5 of which the State of Florida did grant to said Railway Company 3840 acres per mile of the lands granted to said State by the United States under Act of Congress of September 28, 1850, to be taken from alternate Sections lying on each side within six miles of the line of said railroad; and said law further provided that any deficiency of such lands lying along and within the distance aforesaid of the said line of railroad, held, by the State of Florida, to make up the number of acres included in the said grant to the said railroad company should be taken from any lands owned by the State or that might thereafter accrue to the said State of Florida, and which were not at that time, towit: on May 31, 1889; — to other then existing corporations; and your orators further say that Section 6, of said Chapter 3996 provided that the Trustees of the Internal Improvement Fund of said State of Florida should, upon the completion of each ten miles of said railroad, issue deeds conveying to said Railroad Company the proportion of lands to which the said Railroad Company might become entitled under said law.

3 2. That a short time previous to the 22nd day of June, 1891, the State Engineer of the State of Florida, inspected the said line of railroad and favorably reported that there had been constructed 15.4 miles thereof: the Commissioner of Agriculture of said State at that time, himself then a member of the Board of Trustees, of said Internal Improvement Fund of the State of Florida, reported, shortly before said 22nd day of June, 1891, that there — no lands within six miles of said line of railroad which could be awarded to said Railroad Company under its said land grant; that on April 24th, 1891, said then Trustees of said Internal Improvement Fund were formally notified in writing by another corporation entitled The Atlantic and Gulf Coast Canal and Okeechobee Land Company, that the last named Company was willing to and thereby did release so much of the lands then reserved to said last named company in six certain designated Townships, towit: Township 42 South, Range 37 East; Township 42 South, Range 38 East; Township 43 South Range 37 East; Township 43 South, Range 38 East; Township 43 South Range 39 East, and Township 44 South Range 40 East, as *in* the said Trustees of said Internal Improvement Fund might convey to said St. Cloud Sugar Belt Railway Company on account of lands then due the latter on account of the line of railroad then constructed; that on said 22nd day of June, 1891, said Trustees of the Internal Improvement — formally and under their official seal, unanimously resolved promised and agreed that as soon as patents should be obtained from the United States for the lands in said six townships selected by the State of Florida, conveyance by said Trustees of said Internal Improvement Fund to said St.

Cloud Sugar Belt Railway Company would be made for the quantity of lands to which said last named company was then entitled, said lands to be taken from the odd numbered sections in said six Townships. Said lands exceeds three thousand dollars in value.

4 3. That thereby said St. Cloud and Sugar Belt Railway Company became the equitable owner of 59,136 acres of land to be taken from the odd numbered sections in the said six townships, and said company acquired the vested right to a proper deed thereto as soon as the United States should execute a patent or patents to the State of Florida, conveying said lands, said computation is reached by allowing 3,840 acres of land for each mile of the 15.4 miles recognized officially by the said Trustees of said Internal Improvement Fund. And your orators further say that all of said six townships were at that time in the County of Dade, State of Florida, but are now in the County of Palm Beach, State of Florida, and are within the limits of the Southern District of said State of Florida, as established for determining the jurisdiction of this Honorable Court. And your orators further say that all of said odd numbered sections in said six named townships were patented by the United States to the State of Florida in the month of April, 1903, but your orators never were aware of this fact until a short time before the filing of this bill, the said patent never yet having been recorded in the land records either of the County of Dade or in the County of Palm Beach, aforesaid.

4. That within nine months after the said contract between the Trustees of the Internal Improvement Fund and said Railway Company, above set forth, the latter conveyed to Hamilton Disston an undivided half interest in said 59,136 acres of land, by deed recorded in the land records of Dade County, in which said lands were then located, and the record thereof is found in Book "S" at page 149; the date of said deed being March 15, 1892; and on the same 15th day of March, 1892, the said Railway Company conveyed its remaining other one half undivided interest in and to said 59,136 acres to John J. Dunne, and the latter, joined by his wife, Kate S. Dunn, did on January 15, 1912, convey to your orator Manila Investment Company his one half undivided interest in said 59,136 acres of land by deed recorded in the land records of Palm Beach County, where said six townships are now situated in Book 15 at page 489.

5 As to the first one half undivided interest originally conveyed to said Hamilton Disston the same passed to your orators, Tacony Trust Company, Henry Disston, and E. F. Steck, as Trustees and Executors under the last will and testament of said Hamilton Disston, the latter having departed this life in the year —. Whereby your orators are now the real owners of said 59,136 acres of land are entitled to receive from said Trustees of the Internal Improvement Fund a proper deed therefor. That demand has been made upon the present Trustees of said Fund, all of whom are defendants in this suit, for a proper deed conveying said lands; that said demand was made before filing this bill (both) by said

Railway Company itself acting for and on behalf of the said grantees of the latter; but the said Trustees refused and declined to comply with the resolution of June 22, 1891, wrongfully and unjustly claiming that the said Trustees of said Internal Improvement Fund were not bound thereby; and your orators being without any remedy at law are obliged to ask relief from a Court of Equity; and your orators further say that said denial and refusal on the part of said Trustees of said Internal Improvement Fund violates the rights of your orators to a deed to said lands, which said rights are secured to your orators by the constitution of the State of Florida, and also by the constitution of the United States; and the action of said Trustees of said Internal Improvement Fund in refusing to execute a conveyance of said lands to your orators or to the predecessors in interest of your orators, in connection with conveyance attempted to be made by said Trustees to other parties hereinafter set forth, is an attempt to deprive your orators of their property without due process of law, and therefore unconstitutional null and void.

5. And your orators further complain and say that on December 23, 1908, the said Trustees of the Internal Improvement Fund, not being the same persons now sued and not being the same persons who made the said agreement of June 22, 1891, but being those persons who constituted the said Board at the time mentioned, to wit: December 23, 1908, entered into and signed a certain agreement with the defendant Richard J. Bolles, which agreement provided among other things for the sale and drainage of an enormous area of land, being over a half million acres, and said agreement was recorded in the land records of Dade County, in Book 46 at page 232, and on the day following, to wit: said Trustees of said Internal Improvement Fund, executed in favor of said defendant Bolles a deed whereby they attempted to convey to said Bolles over half a million acres of lands, and included in said deed 43 sections of land, belonging to your orator, the numbers of said 43 sections being hereinafter set forth; and said deed was recorded in the records of Dade County Book 46 at page 240; and on said 23rd day of December, 1908, said Richard J. Bolles executed in favor of said Trustees of said Internal Improvement Fund a certain mortgage covering the same lands mentioned in said deed in favor of said Bolles, said mortgage being for the sum of $950.00 and alleged therein to be given to secure the payment of what is called by said parties a drainage note; and said mortgage is of record in said Dade County records Book 12 of Mortgages, at page 452. Later on May 18, 1910, said Trustees released from said Mortgage one section of said land, to wit: Section 17, in Township 43 South, Range 37 East, by a document of satisfaction partial, found in the records of Palm Beach County, Book number 2 of Satisfactions of Mortgages, page 165, your orators allege that said mortgage is in force as far as the same can effect the lands therein described, except said Section released as just stated, and said Section 17 in Township 43 South, Range 37 East, being 640 acres of land is set forth in a deed with covenants of warranty executed by said defendant Bolles in favor of the defendant John

6

E. Andrus recorded in Palm Beach County, Records, Deed Book 7 page 131.

6. And your orators further complain and say that on December 15, 1908, a deed was executed by said Trustees in favor of the defendant P. A. Vans Agnew, purporting to convey ten sections of said land belonging to your orators, the same hereinafter described, which deed is of record in the land records of Dade County, Book 46 at page 211, and on December 16, 1908, said defendant P. A. Vans Agnew executed a deed in favor of the defendant Nathan P. Bryan, an undivided interest in said ten sections last referred to being described therein, which deed is also of record in said Dade County records, in Book 46 at page 248; and on February 6, 1909, said defendants P. A. Vans Agnew, Nathan P. Bryan and Julia S. Bryan, the wife of the latter, joined in a warranty deed in favor of the defendant J. M. Barrs, purporting to convey the same ten sections last referred to; and on March 1, 1909, said defendant J. M. Barrs executed in favor of the defendant, The Florida Everglades Land Company a deed purporting to convey with covenants of warranty the same ten sections of land last referred to; which deed is of record in Dade County, Book 46 page 332, and on January 19, 1909, there was executed a certain contract of partnership between the defendants Richard J. Bolles and William O'Brien, whereby the former purported to confer upon the latter a certain interest in the lands theretofore included in the deed made by the said Trustees to the said Bolles, less the one section claimed as aforesaid by the said defendant Andrus.

7

And this said agreement or contract of partnership between the defendants Bolles and O'Brien was recorded in the records of said Palm Beach County in Book number 1 of Miscellaneous Records at page 74.

7. And your orators further say that the total area of all the lands so reserved as aforesaid in the year 1891, long before any of the said defendants, Bolles, Andrus, Vans Agnew, Bryan and wife, Barrs Florida Everglades Land Company or O'Brien, appeared upon the scene said reservation being for the sole benefit of the said Railway Company and its successors in interest, being the aggregate of the odd numbered sections in said six townships, computing the ten acres in each section is the quantity of 65,594 acres, the detailed figures being as follows: to wit:

In Township 42, Range 37.

Sections 1 and 3	1.280 acres
Section 5	7 acres
Section 7 all in Lake	00 "
Section 9, fractional	161 "
Sections 11 and 13	1,280 "
Section 15 fractional	473 "
Section 17 fractional	423 "
Section 19 fractional	547 "

8	Sections 21, 23, 25, 27, 29	3,200 acres	
	Section 31, fractional	163 acres	
	Sections 33 and 35	1280 "	
	Total acres in Tp. 42, Rg. 37	8,814	8,814
	18 complete odd numbered sections in Tp. 42, Rg. 38		11,520

In Township 43, Range 37.

Sections 1 and 3	1,280 acres	
Section 5, fractional	624 "	
Section 7, fractional	394 "	
Secs. 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29	7,040 "	
Section 31 fractional	82 "	
Sections 33 and 35	1,280 "	
Total acres in Tp. 43, Rg. 37	10,700	10,700
18 complete odd numbered sections in Tp. 43, Rg. 38		11,520
18 complete odd numbered sections in Tp. 43, Rg. 39		11,520
18 complete odd numbered sections in Tp. 44, Rg. 40		11,520
Grand total of acres in six townships	65,594	65,594

And your orators say further that out of said total acres being 65,594 the legal title is still in said Trustees of the Internal Improvement Fund to 32,386 acres, the description thereof being as follows and hereinafter designated as Schedule "T" for convenience of reference: your orators being the equitable owners of said 32,386 acres and entitled to a formal deed from the said Trustees of said Internal Improvement Fund, to obtain said deed being one of the purposes of this bill, for which relief your orators specifically pray:

Schedule "T."

Section 3	Tp. 42,	Rg. 37,	640 A.
Section 5 fractional	42,	37,	7
Section 11	42	37	640
Section 15 fractional	42	37	473
Section 19 fractional	42	37	547
Sections 23 and 27	42	37	1,280
Section 31, fractional	42	37	163
Section 35	42	37	640
Sections 3, 7, 11, 15, 19, 23, 27, 31, 35	42	38	5,760
Section 3	43	37	640
Section 7, fractional	43	37	394
Sections 11, 15, 19, 23, 27	43	37	3,200
Sections 31 fractional	43	37	82

Section 35	43	37	640
Sections 3, 7, 11, 15, 19, 23, 27, 31, 35.	43	38	5,760
Sections 3, 7, 11, 15, 19, 23, 27, 31, 35.	43	39	5,760
Sections 3, 7, 11, 15, 19, 23, 27, 31, 35.	44	40	5,760
Total acres in Schedule "T"			32,386

9 Deducting this total acres held still by the Trustees, so far as the naked legal title is concerned, amounting to 32,386 acres, from the total acreage of 65,594 in said six townships, the result is 33,208 acres, which the said Trustees of said Internal Improvement Fund have attempted to convey to the other defendants in this cause, the particular parcels being as follows:

To said Vans Agnew, thence to said Florida Everglades Land Company, as above set forth, Sections 1, 9, 13, 17, 21, 25, 29, 33 in Township 42 Range 37, being 4,424 acres; and Sections 1 and 5 in Township 43 Range 37 being 1,264 acres, and making a total claimed by said Florida Everglades Land Company of 5,688 acres; To said defendant R. J. Bolles, (defendant O'Brien, also claiming a certain interest therein) Sections 1, 5, 9, 13, 17, 21, 25, 29, 33 in Township 42, Range 38, also Sections 1, 5, 9, 13, 17, 21, 25, 29, 33 in Township 43, Range 38; also Sections 1, 5, 9, 13, 17, 21, 25, 29, 33 in Township 43, Range 39; also Sections 9, 13, 21, 25, 29, 33 in Township 43, Range 37; also Sections 1, 5, 9, 13, 17, 21, 25, 29, 33 in Township 44, Range 40; the total acres claimed by said defendants Bolles and O'Brien being 26,880 and the defendant J. E. Andrus claims Section 17, in Township 43, Range 37, containing 640 acres; said lands last described are summarized as Schedule "I" as follows:

Schedule "I."

Total acres claimed by Florida Everglades Land Company	5,688
Total acres claimed by Bolles & O'Brien	26,880
Total acres claimed by J. E. Andrus	640
Total acres claimed by individuals	33,208

8. And your orators say that after your orators shall receive a conveyance of the lands in Schedule "T" the bare legal title to which is still in the Trustees of said Internal Improvement Fund, the total acreage being 32,386 as above set forth in detail; there will still remain 26,750 acres of land in said six townships formal conveyance to which should be made to your orators in order to give to your orators the land to which they are entitled to receive the legal title, they being already the owners of the equitable title thereto; that said

10 26,750 acres must be taken from the 33,208 acres in Schedule "I" that the percentage of the lands in said Schedule "I" to which your orators are entitled to receive the legal title, your orators being already the owners of the equitable title is .805533 per cent; and that therefore your orators are entitled to receive from

said Florida Everglades Land Company 4,581.80 acres out of the 5,688 acres claimed by the latter; and your orators are likewise entitled to receive from said defendants Bolles & O'Brien 21,652.70 acres out of the 26,880 acres claimed by the said Bolles and O'Brien, and likewise from said defendant J. E. Andrus 515.50 acres out of the 640 acres claimed by the said Andrus. Said several acres last mentioned to be decreed to your orators, to wit: 4,581.80 acres; 21,652.70 acres; and 515.50 acres; making in all 26,750 acres, when added to the 32,386 acres in schedule "T" will make a grand total of 59,136 acres, belonging to your orators, as set forth in the opening paragraph of this bill.

9. And your orators allege that each and all of said defendants had full notice of the equities now belonging to your orators, such knowledge on the part of all said defendants existing long before any claim for any of said land was ever made or attempted to be made by any of said defendants. And by reason — the premises your orators allege that said Trustees of said Internal Improvement Fund are Trustees of the legal title to the 32,386 acres in said Schedule "T" for the benefit of your orators; also that the defendants Florida Everglades Land Company are holders of the legal title to 4,581.80 acres of the land claimed by its as Trustees for your orators; that the defendants Bolles and O'Brien are holders of the legal title to 21,652.70 acres of land claimed by them as Trustees for your orators; and that the defendant Andrus is Trustee for your orators with respect to the legal title to 515.50 acres of the land claimed by him; and that in case the several parties can not agree to the selection of said three last mentioned pro rata quantities, or percentages, of said lands your orators pray that a Special Master or Commissioner may be named by the Court who shall make such selections.

10. And your orators say that with respect to the reservation of lands in said six townships in favor of said Atlantic Gulf Coast Canal and Okeechobee Land Company, heretofore referred to in
11 paragraph two of this bill of complaint, said reservation had been previously made by the Trustees of the Internal Improvement Fund of the State of Florida by reason of a certain contract between said last named Trustees and the said last named Company, and that under said contract the said lands had been earned by said last named Company, and the right of said last named Company to said lands in said six sections had been recognized by said Trustees of said Internal Improvement Fund, who thereupon had reserved said lands for said Company last referred to; and that by the said resolution of June 22nd, 1891; hereinbefore referred to, the said reservation inured to the benefit of the said St. Cloud and Sugar Belt Railway Company and its successors in title and interest; and that the attempt by the defendants in this bill to defeat the rights of your orators is in violation of the constitution of the United States and also in violation of the constitution of the State of Florida.

11. And your orators say that on the 9th day of November, 1901, there was recorded in the land records of the said County of Dade in Deed Book 4 at page 271, a document in favor of one Joseph K. Clark, executed by said John J. Dunne and Kate S. Dunne, his wife,

which is on its face a warranty deed, purporting to convey to said Clark, his heirs and assigns, one fourth undivided interest in said 59,136 acres of land; that the expressed consideration in said document is one dollar; but your orators say and are ready to prove that said document was actually a mortgage given by said John J. Dunne as security for certain indebtedness then due from him to the said Clerk; and that the same was during the life of said Clark always recognized as a mere mortgage and that since the death of said Clark, his legal representatives have always recognized said document as a mere mortgage and that they do so now recognize it as such.

12 The premises considered, your orators pray that the said Trustees of the Internal Improvement Fund of the State of Florida may be decreed to hold as Trustees for your orators the said 32,386 acres of land described above as Schedule "T"; and that said Trustees be directed to make a proper conveyance thereof to your orators; that the said defendant Florida Everglades Land Company be decreed to hold in trust for your orators 4,581.80 acres of the land claimed by it and mentioned in said Schedule "I"; and that said last named corporation be directed to execute a proper conveyance to your orators of said land, after the same shall be selected as above prayed; that likewise said defendants Bolles and O'Brien be decreed to hold as Trustees for your orators the legal title to said 21,652.70 acres of land and that they be directed to make a proper deed thereto in favor of your orators, after the same shall be selected as aforesaid; and that likewise the said defendant J. E. Andrus shall be decreed to hold in trust for your orators 515.50 acres of the land so claimed by him, and that he be directed to make a proper conveyance thereof to your orators after the same shall be selected as aforesaid; and your orators further pray that the Court shall decree that when said several conveyances were made by said Trustees of the Internal Improvement Fund to the several defendants as above set forth, such conveyances were made subject to the superior rights and equities of your orators or of the predecessors of your orators in interest. And your orators further pray, in the alternative, that in case the Court shall be of the opinion that the rule of conveying to your orators the deficiency in acreage which has heretofore been mentioned, by the application of percentage as among the several defendants other than the Trustees of the Internal Improvement Fund, that then the Court will in its superior wisdom apply the rule of inverse order of alienation, or such other rule as may do justice and equity among all the parties to this cause. Your orators now submit their rights to this Honorable Court and will accept any ruling of this Court which shall place in these complainants the legal title to the 32,386 acres of land in Schedule "T" and also the legal title to 26,750 acres of the other lands in the stated Six Town-

13 ships mentioned in this bill and specifically set forth in the said contract of June 22, 1891. And your orators pray for such other and further relief in the premises as equity may require and to the Court may seem fit and proper in the premises.

May it please the Court to grant unto your orators the usual writ of subpœna, in the name of the United States of America, and

under the Seal of this Honorable Court, the same to be directed to the defendants, towit: Albert W. Gilchrist, Park Trammell, William V. Knott, William A. McRae, and J. C. Luning, as Trustees of the Internal Improvement Fund of the State of Florida; Richard J. Bolles, William O'Brien, John E. Andrus, Florida Everglades Land Company; P. A. Vans Agnew, J. M. Barrs, Nathan P. Bryan, and Julia S. Bryan, his wife, requiring them each and all to appear to this bill upon a rule day of this Honorable Court to be stated in said subpœna, also to answer to this bill, but not under oath, the answer under oath being hereby expressly waived.

And your orators as in duty bound will ever humbly pray, etc.

(Signed) ARTHUR F. ODLIN AND
F. M. SIMONTON,
Solicitors for Complainants.

Endorsed: In U. S. District Court, Southern District of Florida. In Chancery. Manila Investment Co. et als. vs. Albert W. Gilchrist et als. Bill to enforce Trust, etc. Filed March 9, 1912. E. O. Locke, Clerk.

14 In the United States District Court for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY, a Corporation,
vs.
A. W. GILCHRIST and Others.

Demurrer of the Florida Everglades Land Company.

The Demurrer of The Florida Everglades Land Company, a Corporation, Organized under and by Virtue of the Laws of the State of Colorado, to the Bill of Complaint of the Manila Investment Company and Others in the Above-entitled Cause.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's bill of complaint to be true in the manner and form as therein set forth and alleged, demurs thereto and for cause of demurrer shows:

1. That it appears upon the face of said bill of complaint that this Court has no jurisdiction of this cause.

2. That it appears upon the face of said bill of complaint that the requisite diversity of citizenship to maintain the jurisdiction of this Court does not exist, and that the action is not one arising under the constitution or laws of the United States.

3. That it does not appear upon the face of the said bill of complaint that this action is one arising under the constitution or laws of the United States, but it does appear affirmatively that
15 diversity of citizenship requisite to support the jurisdiction of this Court cannot be invoked without violating Section 639 of the Revised Statutes of the United States, and the Act of

Congress of March 3rd, 1888, denying to this Court cognizance of any suit to recover the contents of a chose in action unless such suit might have been prosecuted in this Court to recover upon such cause of action even though such assignment had not been made.

4. That the Complainants have not in and by their said bill of complaint made or stated such a cause as does or ought to entitle them or any of them to any such relief or discovery as thereby sought or prayed from or against this defendant.

5. That said bill is without equity.

6. That the complainants have not, as appears by their said bill of complaint, made out or stated any right or title to the relief thereby prayed.

7. That the executor, administrator or legal representative of the estate of Joseph K. Clark, deceased, essential parties defendant, have not been made parties to said bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing upon said bill, this defendant demurs thereto and prays the judgment of this Honorable Court whether it shall be compelled to make further or other answer to said bill, and prays to be hence dismissed with its reasonable costs in this behalf sustained.

(Signed) E. J. L'ENGLE,
Solicitor and of Counsel for said Defendant,
The Florida Everglades Land Co.

16 STATE OF FLORIDA,
County of Duval:

On this day personally appeared before me Percy Hagerman, who, being duly sworn, deposes and says: That he is the Vice-President of the said The Florida Everglades Land Company, and authorized to make this affidavit on behalf of said defendant, and that said demurrer is not interposed for the purpose of delay.

(Signed) PERCY HAGERMAN.

Sworn to and subscribed before me this 27th day of April 1912.

(Signed) BERTHA Y. FARNHAM,
[SEAL.] *Notary Public.*

I hereby certify that I am Solicitor and of Counsel for said The Florida Everglades Land Company, and that in my opinion the foregoing demurrer is well founded in point of law.

(Signed) E. J. L'ENGLE.

Endorsed: In the U. S. Dostrict Court for the Southern District of Florida. In Chancery. Manila Investment Company, a corporation, vs. A. W. Gilchrist, and others. Demurrer of The Florida Everglades Land Company. Filed April 29, 1912, E. O. Locke, Clerk.

17 In the District Court of the United States for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY et al.

vs.

ALBERT W. GILCHRIST et al., as Trustees of the Internal Improvement Fund of the State of Florida, and RICHARD J. BOLLES et al.

The Demurrer of Albert W. Gilchrist, Governor; Park M. Trammell, Attorney General; William V. Knott, Comptroller; W. A. McRae, Commission- of Agriculture, and J. C. Luning, State Treasurer, as Trustees of the Internal Improvement Fund of the State of Florida, Defendants to the Bill of Complainat of the Manila Investment Company, a Corporation Created under the Laws of the State of Nevada; Tacony Trust Company, a Corporation Created under the Laws of the State of Pennsylvania; Henry Disston and E. F. Steck, of the State of Pennsylvania, the Above-named Plaintiffs.

These defendants by protestation, not confessing all or any of the matters and things in the plaintiffs' Bill of Complaint, contained, to be true in such manner and form as the same is therein set forth, and alleged, doth demur to said Bill, and for cause of demurrer saith:

1. That it affirmatively appears from the Bill of Complaint in said cause, that this Court is without jurisdiction to hear and determine this controversy.

2. That it affirmatively appears from the Bill of Complaint that the plaintiffs' claim as assignees of "St. Cloud Sugar Belt Railroad Company" a Florida corporation, and as such assignees are seeking to enforce an alleged contract between the Trustees of the Internal Improvement Fund of the State of Florida, predecessors in office of these defendants, and the St. Cloud Sugar Belt Railway
18 Company, a corporation, organized under the Laws of the State of Florida.

3. That it does not affirmatively appear from the Bill of Complaint that the St. Cloud Sugar Belt Railway Company, assignors of the plaintiffs in this cause, might have maintained a suit in this Court to enforce the alleged contract upon which the plaintiffs' action is based.

4. That it affirmatively appears from the Bill of Complaint in this cause, that the plaintiffs claim the benefit of a contract alleged to have been entered into between the Trustees of the Internal Improvement Fund of the State of Florida, and the St. Cloud Sugar Belt Railway Company, a Florida corporation, both parties to said alleged contract being citizens and residents of the State of Florida.

5. That it affirmatively appears from the Bill of Complaint that the St. Cloud Sugar Belt Railway Company was a Florida corporation, and the assignors of the plaintiff, and that the said railroad Company could not have maintained its suit in this Court against

these defendants, upon the contract alleged to have been entered into between them.

6. That it affirmatively appears from the Bill of Complaint that the State of Florida is the real party in interest in this controversy, within the meaning of the eleventh (11th) amendment to the Constitution of the United States and that this Court is without jurisdiction for that reason to hear and determine this cause.

7. That Sections 4, 5, and 6 of Chapter 3996 of the Laws of Florida, 1889, under which the St. Cloud Sugar Belt Railway Company, the assignor of the plaintiffs, bases its claim to the lands mentioned in the Bill of Complaint, is unconstitutional and void.

8. That the plaintiffs have not in and by their said Bill made or stated such a case as emtitled them in a Court of Equity
19 to any relief against these defendants, as to the matiers contained in the said Bill or any such matters.

Wherefor and for divers other good causes of demurrer appearing in said Bill, these defendants doth demur thereto, and humbly demand the judgment of this Court whether they shall be compelled to make any further or other answer to the said Bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully su-tained.

(Signed)

W. H. ELLIS,
Solicitors for Albert W. Gilchrist et al., as Trustees of the Internal Improvement Fund of the State of Florida.

STATE OF FLORIDA,
Duval County:

Before the undersigned authority, personally came Albert W. Gilchrist, William V. Knott, Park M. Trammell, J. C. Luning, and W. A. McRae, defendants in the above entitled cause, constituting the Trustees of the Internal Improvement Fund of the State of Florida and each upon oath says that the foregoing demurrer is not interposed for delay only.

(Signed)

W. V. KNOTT.
PARK TRAMMELL.
J. C. LUNING.
W. A. McRAE.

Sworn to and subscribed before me this 26th day of April, A. D. 1912.

(Signed)
[SEAL.]

GEORGE B. LOTT,
Notary Public, State of Florida.

My Commission expires Dec. 27, 1915.

We certify that in our opinion the foregoing demurrer is well founded in point of law.

(Signed)

W. H. ELLIS,
Solicitors for Albert W. Gilchrist et al., as Trustees of the Internal Improvement Fund of the State of Florida.

20 STATE OF FLORIDA,
De Soto County:

Before the undersigned authority personally came Albert W. Gilchrist, who, being duly sworn, deposes and says that as one of the Trustees of the Internal Improvement Fund of the State of Florida, he is one of the defendants in the case of Manila Investment Company et al. vs. Albert W. Gilchrist et al., as Trustees of the Internal Improvement Fund of the State of Florida, and Richard J. Bolles et al., pending in the District Court of the United States for the Southern District of Florida, and this deponent further says that the demurrer interposed by the said Trustees of the Internal Improvement Fund to the Bill of Complaint in said cause and hereto attached is not interposed for delay only.

(Signed) ALBERT W. GILCHRIST.

Sworn to and subscribed before me this 29th day of April, A. D. 1912.

(Signed) M. V. WILLIAMS, [SEAL.]
Notary Public, State of Florida.

My Commission expires Sept. 18, 1912.

Endorsed: U. S. District Court, Southern District of Florida. Manial Investment Company et al. vs. A. W. Gilchrist et al., Trustees I. I. Fund et al. Trustees Internal Improvement Fund's Demurrer to Bill. Filed May 2, 1912. E. O. Locke, Clerk.

21 In the United States District Court for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY, a Corporation,
vs.
A. W. GILCHRIST and Others.

Demurrer of Nathan P. Bryan.

The Demurrer of Nathan P. Bryan, a Citizen and Resident of the State of Florida, to the Bill of Complaint of the Manila Investment Company and Others in the Above-entitled Cause.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's bill of complaint, to be true in the manner and form as therein set forth and alleged, demurs thereto and for cause of demurrer shows:

1. That it appears upon the face of said bill of complaint that this Court has no jurisdiction of this cause.

2. That it appears upon the face of said bill of complaint that the requisite diversity of citizenship to maintain the jurisdiction of this Court does not exist, and that the action is not one arising under the constitution or laws of the United States.

3. That it does not appear upon the face of the said bill of complaint that this action is one arising under the constitution or laws of the United States, but it does appear affirmatively that diversity of citizenship requisite to support the jurisdiction of this Court cannot be invoked without violating Section 639 of the Revised Statutes of the United States, and the Act of Congress, of March 3rd, 1888, denying to this Court cognizance of any suit to recover the
22 contents of a chose in action unless such suit might have been prosecuted in this Court to recover upon such cause of action even though such assignment had not been made.

4. That the complainants have not in and by their said bill of complaint made or stated such a cause as does or ought to entitle them or any of them to any such relief or discovery as thereby sought or prayed from or against this defendant.

5. That said bill is without equity.

6. That the complainants have not, as appears by their said bill of complaint, made out or stated any right or title to the relief thereby prayed.

7. That the executor, administrator or legal representatives of the estate of Joseph K. Clark, deceased, essential parties-defendant, have not been made parties to said bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing upon said bill, this defendant demurs thereto and prays the judgment of this Honorable Court whether he shall be compelled to make further or other answer to said bill, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

(Signed) E. J. L'E

Solicitor and of Counsel for Nathan P. Bryan.

STATE OF FLORIDA,
County of Duval:

On this day personally appeared before me Nathan P. Bryan, who, being duly sworn, deposes and says, That he is one of the defendants in the above entitled cause, and that the foregoing demurrer is not interposed for the purpose of delay.

Signed) NATHAN P. BRYAN.

Sworn to and subscribed before me this 30th day of April, 1912.

(Signed) BERTHA Y. FRANHAM, [SEAL.]
Notary Public.

23 I hereby certify that I am Solicitor for the said Nathan P. Bryan, and that in my opinion the foregoing demurrer is well founded in point of law.

(Signed) E. J. L'ENGLE.

Endorsed: In the U. S. District Court for the Southern District of Florida. In Chancery. Manila Investment Company vs. A. W. Gilchrist and others. Demurrer of Nathan P. Bryan. Filed May 6, 1912. E. O. Locke, Clerk.

24 In the United States District Court for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY, a Corporation,
vs.
A. W. GILCHRIST and Others.

Demurrer of P. A. Vans Agnew.

The Demurrer of P. A. Vans Agnew to the Bill of Complaint of the Manila Investment Company and Others in the Above-entitled Cause.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the complainants' bill of complaint, to be true in the manner and form as therein set forth, and alleged, demurs thereto and for cause of demurrer shows:

1. That it appears upon the face of said bill of complaint that this Court has no jurisdiction of this cause.

2. That it appears upon the face of said Bill of complaint that the requisite diversity of citizenship to maintain the jurisdiction of this Court does not exist, and that the action is not one arising under the constitution or laws of the United States.

3. That it does not appear upon the face of the said bill of complaint that this action is one arising under the constitution or laws of the United States, but it does appear affirmatively that diversity of citizenship requisite to support the jurisdiction of this Court cannot be invoked without violating Section 639 of the Revised Statutes of the United States, and the Act of Congress, of March 3,
25 1888, denying to this Court cognizance of any suit to recover the contents of a chose of action unless such suit might have been prosecuted in this Court to recover upon such cause of action even though such assignment had been made.

4. That the complainants have not in and by their said bill of complaint made or stated such a cause as does or ought to entitle them or any of them to any such relief or discovery as thereby sought or prayed from or against this defendant.

5. That said bill is without equity.

6. That the complainants have not, as appears by their said bill of complaint made out or stated any right or title to the relief thereby prayed.

7. That the executor, administrator or legal representative of the estate of Joseph K. Clark, deceased, essential parties-defendant, have not been made parties to said bill of complaint.

Wherefore and for divers other good causes of demurrer appearing upon said bill, this defendant demurs thereto and prays the judgment of this Honorable Court whether it shall be compelled to make further or other answer to said bill, and prays to be hence dismissed with its reasonable costs in this behalf sustained.

(Signed) W. B. CRAWFORD,
Solicitor and of Counsel for said Defendant, P. A. Vans Agnew.

STATE OF FLORIDA,
County of Osceola, ss:

On this day personally appeared before me P. A. Vans Agnew, who, being duly sworn deposes and says: That he is one of the defendants in the above entitled cause; that he has read the foregoing demurrer, and that the same is interposed in good faith and not for the purpose of delay.

(Signed) P. A. VANS AGNEW.

Sworn to and subscribed before me this 4th day of May, A. D. 1914.

(Signed) M. W. SARGENT, [SEAL.]
Notary Public.

26 I hereby certify, that I am Solicitor and of Counsel for said P. A. Vans Agnew, and that in my opinion the foregoing demurrer is well founded in point of law.

(Signed) W. B. CRAWFORD.

Endorsed: United States District Court, Manila Investment Company, a corporation, vs. A. W. Gilchrist et als. Demurrer of P. A. Vans Agnew. Filed May 6, 1912. E. O. Locke, Clerk.

27 In the United States District Court for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY, a Corporation, Complainants,
vs.
A. W. GILCHRIST et al., Defendants.

Demurrer of J. M. Barrs.

The Demurrer of J. M. Barrs, a Citizen of Duval County, Florida, to the Bill of Complaint of Manila Investment Company vs. A. W. Gilchrist et al.

This defendant by protestation, not confessing or acknowledging ll or any of the matters and things in the complainant's bill of omplaint to be true in the manner and form as therein set forth nd alleged, demurs thereto, and for cause of demurrer shows:

1. That it appears upon the face of said bill of complain*ant* that is court has no jurisdiction of this cause.

2. That it appears upon the face of said bill of complaint that e requisite diversity of citizenship to maintain the jurisdiction of is Court does not exist, and that the action is not one arising under e constitution or laws of the United States.

3. That it does not appear upon the face of the said bill of comaint that this action is one arising under the constitution or laws the United States, but it does appear affirmatively that diversity citizenship requisite to support the jurisdiction of this Court can-

not be invoked without violating Section 639 of the Revised
28 Statutes of the United States, and the Act of Congress of March 3rd, 1888, denying to this Court cognizance of any suit to recover the contents of a chose in action unless such suit might have been prosecuted in this Court to recover upon such cause of action, even though such assignment had not been made.

4. That the complainant had not in and by its said bill of complaint made or stated such a cause as does or ought to entitle it to any such relief or discovery as thereby sought or prayed from or against this defendant.

5. That the bill is without equity.

6. That the complainant has not, as appears by its said bill of complaint, made out or stated any right or title to the relief thereby prayed.

7. That the executor, administrator or legal representative of the estate of Joseph K. Clark, deceased, essential parties defendant, have not been made parties to said bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing upon the face of said bill, this defendant demurs thereto and prays the judgment of this Honorable Court whether he shall be compelled to make further or other answer to said bill and prays to be hence dismissed with his reasonable costs in this behalf sustained.

(Signed) P. H. ODOM,
Attorney for Defendant J. M. Barrs.

29 STATE OF FLORIDA,
County of Duval:

On this day personally appeared before me J. M. Barrs who being first duly sworn, says that the foregoing demurrer is not interposed for the purpose of delay.

(Signed) J. M. BARRS.

Sworn to and subscribed before me this 6th day of May, A. D. 1912.

[SEAL.] (Signed) E. B. NULL,
Notary Public, State of Florida, at Large.

I hereby certify that I am solicitor and of Counsel for J. M. Barrs, and that in my opinion, the foregoing demurrer is well founded in point of law.

(Signed) P. H. ODOM.

Endorsed: In the United States Court for the Southern District of Florida, In Chancery. Manila Investment Company, vs. A. W. Gilchrist, et al., Demurrer of J. M. Barrs, Filed May 6, 1912, E. O. Locke, Clerk.

30 In the District Court of the United States for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY et als.
vs.
PARK TRAMMELL et als.

Bill to Enforce a Trust—Supplemental Bill.

To the Honorable John M. Cheney, Judge of said Court; in Chancery:

Your orators, Manila Investment Company, a citizen of the State of Nevada, a corporation under the laws of Nevada, duly empowered to do business in the State of Florida; also Tacony Trust Company, citizen of the State of Pennsylvania, a corporation under the laws of said State of Pennsylvania, and Henry Disston, E. F. Steck, also citizens of said State of Pennsylvania the said Trust Company, Henry Disston and E. F. Steck, suing as Trustees under the last will and testament of Hamilton Disston, deceased, who was in his lifetime a citizen and resident of said State of Pennsylvania, the said Trustees of his said will having been duly appointed as such by and under an order of the Court, of the County of Philadelphia, in said State of Pennsylvania, bring this their bill of Complaint, being a supplemental bill filed under an order of this Honorable Court, against Park Trammell, Thomas F. West, William V. Knott, W. A. McRae, and J. C. Luning, as Trustees of the Internal Improvement Fund of the State of Florida, said defendants already named being five in number all citizens of the State of Florida residing at Tallahassee in said State of Florida, and now being respectively, Governor, Attorney General, Comptroller, Commissioner of Agriculture, and Treasurer of said State of Florida, and by reason thereof being the sole members of said Board of Trustees of the Internal Improvement Fund of the State of Florida; also
31 against Richard J. Bolles, a citizen of the State of *of the State of* Colorado, residing at Colorado Springs, in said State of Colorado; William O'Brien, a citizen of said State of Colorado; residing at Denver in said State of Colorado; John E. Andrus, a citizen of the State of New York, residing at Peekskill in said State of New York; Florida Everglades Land Company a corporation, under the laws of said State of Florida, and a citizen of said State of Florida, with its chief place of business at Jacksonville, Florida; P. A. Vans Agnew, a citizen of Florida, residing at Kissimmee, Florida; J. M. Barrs, a citizen of Florida, residing at said City of Jacksonville; Nathan P. Bryan and Julia S. Bryan his wife, citizens of Florida, also residing at said City of Jacksonville, the defendants; and thereupon your orators complain and say:

1. That at the time of the filing of the original bill in this cause the members of said Board of Trustees of said Internal Improvement Fund of said State of Florida, were Albert W. Gilchrist, as Governor of Florida; Park Trammell, as Attorney-General of Florida; and

the said William V. Knott, W. A. McRae and J. C. Luning, as alleged above in this supplemental bill with respect to the three defendants last named; but that on or about the sixth day of January, 1913, the said Albert W. Gilchrist ceased to be Governor of Florida, and said Park Trammell, ceased to be Attorney General of Florida, the present Governor being Park Trammell, and the present Attorney General being Thomas F. West; for which reason your orators obtained from your Honor leave to file this supplemental bill.

2. That on or about the 12th day of March, 1879, there was approved an act of the Legislature of the State of Florida, known as Chapter 3166 of the Laws of Florida, by which there was granted to any railroad Company which might be incorporated under the general incorporation act of Florida the alternate sections within six miles of such line of railroad as might be constructed in accordance with such plans and specifications as might be agreed upon between the Trustees of the said Internal Improvement Fund,
32 and the Directors of such Railroad Company, with the privilege of making up any deficiency in the quantity of land, from the like alternate sections within twenty miles.

3. That previous to the year 1889 there was duly incorporated under the laws of the State of Florida a corporation, named the St. Cloud and Sugar Belt Railway Company, hereinafter referred to, for brevity as the Railway Company, and was duly empowered to construct, maintain and operate a line of railroad from Kissimmee in the County of Osceola, State of Florida, to Narcoosee in said County of Osceola, a distance of 15.4 miles, upwards of ten miles of which line of railroad had been constructed and were in operation previous to the 31st day of May, 1889, and the entire said distance of 15.4 miles were completed and in operation prior to the 12th day of June, 1891; and on said 12th day of June, 1891, after the approval of the State Engineer, employed by the said Board of Trustees of the Internal Improvement Fund, of the said 15.4 miles of railroad so constructed as aforesaid, the said Trustees of said Board did order a conveyance to be made to said Railway Company of the alternate sections for said 15.4 miles so constructed, operated and approved.

4. And your orators further say that a corporation organized under the laws of said State of Florida, towit: The Atlantic and Gulf Coast Canal and Okeechobee Land Company (hereinafter called for convenience the Land Company) had, previous to the 24th day of April, 1891, acquired the vested right to 84,428 acres of land, by virtue of a certain contract between said Land Company and said Trustees of the Internal Improvement Fund, which contract was dated August 1, 1888, and which is known as the "compromise agreement" entered into by said Trustees of said Internal Improvement Fund by authority conferred by the Legislature of the said State of Florida under the Act known as Chapter 3788 of the laws of Florida, approved June 2, 1887, wherein and
33 whereby it was provided that the Land Company should within 90 days file with said Trustees a selection of alternate

sections within the limits of the former Drainage Reserve, the lands that were to be thereafter acquired, "and said Trustees shall hold the lands so selected in reserve for said Company for the purposes and according to the terms of this contract" also that after the additional expenditure of $70,000 on account of lands previously conveyed to said Land Company there should be a further expenditure of $206,264 at the rate of $40,000 per annum, entitling said Land Company to receive deeds at the rate of 25 cents per acre, for such expenditure and that the "Trustees will at the request of said Company convey to said Company three fifths of the land which would be thereby earned at the rate of 25 cents per acre" and on July 31, 1890, under the conditions of the aforesaid agreement the said Land Company acquired a vested right to 84,428 acres of land within said designated reserve. And the said acreage of 84,428 acres included and embraced the 59,136 acres of land herein specifically described and claimed now by your orators as hereinafter set forth. And on or about said 24th day of April, 1891, the said Land Company requested and directed the said Trustees of the Internal Improvement Fund to convey to said Railway Company the 59,136 acres of land which the latter had earned by building its said line of railroad, and being a portion of the said 84,428 acres of land which the said Land Company, was entitled to have conveyed to itself. At that time, towit: on or about the 24th day of April, 1891, the said Trustees of said Internal Improvement Fund could not give a deed to said 59,136 acres, hereinafter described, because the same had not then been patented to the State of Florida by the United States although the selections thereof under the "Swamp and Overflowed" Acts of Congress had been approved by the United States; but said Trustees of said Internal Improvement Fund could lawfully make a contract and binding promise to con-
34 vey said lands thereafter, subject to the patent therefor being issued by the United States thereafter; and thereupon on the 22nd day of June, 1891, said Trustees did by a formal resolution (which first recited the transfer aforesaid by the Land Company in favor of the Railroad Company, as regarded the said 59,136 acres of land) agree to convey to said Railway Company the said 59,136 acres of land, as soon as patents should be obtained from the United States covering the same, and thereupon the Secretary of said Board of Trustees did deliver to the Attorney of said Railway Company acting at that time, a certified copy of such resolution, the said copy bearing the seal of the said Board of Trustees. And your orators say that the said amount of 59,136 acres is reached by taking the language of said resolution itself wherein it is recited that said Railway Company is entitled to receive 3,840 acres of land for each mile of the 15.4 miles of railroad completed by said Railway Company. A short time previous to said 22nd day of June, 1891, the State Engineer of the State of Florida inspected the said line of railroad so constructed as aforesaid and favorable reported that there had been constructed 15.4 miles thereof; and the then Commissioner of Agriculture of the State of Florida reported; shortly before said 22nd day of June, 1891, that there were no lands within six miles

of said line of railroad which could be granted to said Railway Company; whereupon on the 24th day of April, 1891, the said land Company did inform and formally notify said Trustees that the lands reserved for said Land Company and to which the latter had a vested right, would be transferred to and reserved instead for said Railway Company, to the extent of the quantity earned by the latter, and that the same should be taken from the large list of lands in six designated townships, towit: Township 42 South, Range 37 East; Township 42 South, Range 38 East; Township 43 South, Range 37 East; Township 43 South Range 38 East; Township 43 South Range 39 East; and Township 44 South Range 40 East, which statement and request and notification made as aforesaid by said Land Company to said Trustees on behalf and for the benefit of said Railway Company was accepted by and ratified by and approved
35 by said Trustees as hereinbefore set forth. And your orators further say that said six designated Townships constitute a part of the Drainage Reserve set aside for said drainage contract with said Land Company. And your orators further say that on June 10, 1894, the said Trustees by formal resolution approved the completion of the contract of August 1, 1888 and ordered that the whole area amounting to 825,056 acres should be conveyed to said Land Company upon the issue of United States Patents therefor.

5. And your orators further say that on the 22nd day of June, 1891 the said Trustees formally and under their official seal unanimously resolved and promised and agreed that "Whereas the Atlantic and Gulf Coast Canal and Okechobee Land Company, has filed with the Board written authority from them to convey to the said St. Cloud and Sugar Belt Railway Company the lands now reserved for said Land Company under its drainage contract with the Board, and to which it will be entitled under said drainage contract in the following

Townships South.	Ranges East.
42	37-38
43	37-38-39
44	40

That they will under the authority aforesaid convey to said St. Cloud and Sugar Belt Railway Company the quantity of lands to which it is now entitled, to be taken from the odd numbered Sections in the Townships aforesaid as soon as patents are obtained from the United States for the state selections in said Townships."

6. And your orators further say that in the Biennial Official Reports issued by the State Land Office of the State of Florida there has appeared for many years past, and there still appears, a statement of the line of railroad constructed by said Railway Company, the number of miles constructed as herein set forth, in this bill; also the quantity of lands as earned by said Railway Company.

7. And your orators further say that by reason of the premises the said Railway Company became the equitable owner of
36 59,136 acres of land, being 3,840 acres of land for each mile of the 15.4 miles of railroad, so constructed by it, said 59,136

acres of land to be taken from the odd numbered sections in the six townships above designated, and said Railway Company acquired the vested right to a proper deed therefor as soon as the United States should execute and deliver to the State of Florida patent or patents covering said lands; and each and all of said six townships were at that time in the County of Dade, State of Florida, and are now within the limits of the County of Palm Beach, State of Florida, and are within the limits of the Southern District of the State of Florida, as established by the Congress of the United States for the purpose of fixing the jurisdiction of this Honorable Court. And the said six townships also constitute a part of the Drainage Reserve set aside for the said Drainage Contract with said Land Company as above set forth, and your orators further say that all of said odd numbered sections in said six designated townships were patented by the United States to the State of Florida in the month of April, 1903, but your orators did not know this fact until shortly before the filing of the original bill in this cause, the said patent not having been yet recorded in the land records of either county of Dade or the County of Palm Beach, aforesaid.

8. And your orators further say that within nine months after the said contract between the Trustees of said Internal Improvement Fund and said Railway Company, above set forth, the latter conveyed to Hamilton Disston one half undivided interest in said 59,136 acres of land, by deed recorded in the land records of said Dade County, wherein said lands were then situated, and the record of said deed is found in Book "S" at page 149, the date of said deed being March 15, 1892, and on the said 15th day of March, 1892, the said Railway Company conveyed its remaining half undivided interest in said 59,136 acres of land to John J. Dunne, who, joined by his wife, Kate S. Dunne, conveyed the same to your
37 orator, Manila Investment Company, by deed dated January 15, 1912, recorded in Palm Beach County, in Deed Book 15, page 489. And as to the one half undivided interest first above mentioned as originally conveyed by said Railway Company to said Hamilton Disston, the same passed to your orators Tacony Trust Company, Henry Disston and E. F. Steck, as Trustees and Executors under the last will and testament of the said Hamilton Disston upon the death of the latter in the year 1896. Whereby your orators are now the real owners of said 59,136 acres of land and are entitled to receive from said Trustees of the Internal Improvement Fund a proper deed to the same; and before the commencement of this suit demand was made upon the then Trustees the same five trustees named in the original bill filed in this cause for a proper deed covering said lands; and that such demand for a deed was made before the commencement of this suit not only by these present orators for themselves, but also by said Railway Company, acting for and on behalf of its grantees as aforesaid; but the said Trustees refused and declined to comply with the resolution which they themselves had adopted and passed; and your orators further say that by reason of the premises your orators are without any remedy at law and are obliged to ask relief from a Court of equity; and your

orators further say that such denial and refusal on the part of said Board of Trustees of said Internal Improvement Fund violates the right of your orators to obtain a deed to their said lands which said right is secured to your orators by the Constitution of the United States, likewise by the Constitution of the State of Florida, and the action of said Board of Trustees in refusing to execute and deliver such deed to your orators, taken in connection with the transfers of said lands attempted to be made by said Trustees to other parties, as hereinafter set forth in this supplemental bill, is an attempt to deprive your orators of their property without due process of law, and is therefore unconstitutional, null and void.

9. And your orators further say that on December 24th
38 1908, the then members of the said Board of Trustees, not being the same persons who as such were made defendants in this cause, and not being the same persons who made said contract or agreement of June 22, 1891, entered into and signed a certain agreement with the defendant Richard J. Bolles, which agreement provided, besides other things, for the sale and drainage of an enormous area of land, being over half a million acres, and said agreement was recorded in the land records of Dade County, in Book 46 at page 232; and on the day following said Trustees executed an ins-rument purporting to be a deed of conveyance in favor of said defendant Bolles, whereby they attempted to convey to said Bolles over half a million acres of lands, and included in said pretended deed 43 sections of land belonging to your orators at the present time, and at the time of the commencement of this suit, the numbers of said 43 sections being hereinafter set forth; and said document was recorded in the land records of said Dade County, in Book 46 at page 240; and on said 23rd day of December, 1908, said Bolles executed in favor of said Board of Trustees an instrument purporting to be a mortgage covering the same lands as were embraced in the so-called deed in favor of said Bolles, said pretended mortgage being stated to be given to secure the payment of the sum of $950,000 and alleged therein to be given to secure the payment of what is called by the parties a "Drainage Note" and said so-called Mortgage is of record in said Dade County Records, Book 12 of Mortgages, at page 452. Later, on May 18, 1910, said Trustees released from the pretended lien of said Mortgage one section of said land, towit: Section 17, in Township 43 South, Range 37 East, by a document of partial satisfaction, found recorded in the records of said Palm Beach County, Book Number 2, of Satisfaction of Mortgages, at page 165; and your orators allege that said Mortgage appears to be in force, so far as the same can affect the said lands therein described, except the said Section 17, being 640 acres, and being the same land mentioned in a deed made with covenants of warranty executed by the defendant Bolles in favor of the
39 defendant John E. Andrus, recorded in Palm Beach County records, Deed Book 7, page 131.

10. And your orators further complain and say that on December — 1908, a deed was executed by the then Trustees in favor of the defendant P. A. Vans Agnew purporting to convey ten sections of said

lands really owned by your orators, the said ten sections being hereinafter described, which deed is of record in Dade County, Book 46 at page 211; and on the — day of December, 1908, said defendant P. A. Vans Agnew, executed a deed in favor of the defendant Nathan P. Bryan, purporting to convey an undivided one half interest in said ten sections, which last mentioned deed is also of record in Dade County, Book 46, page 248; and on February 6, 1909, said defendants P. A. Vans Agnew, Nathan P. Bryan and Julia S. Bryan, joined in a warranty deed in favor of the defendant J. M. Barrs purporting to convey the same ten sections last referred to and on March 1, 1909, said defendant J. M. Barrs, executed in favor of defendant Florida Everglades Land Company, a deed purporting to convey with covenants of warranty the same ten sections of land last referred to; which deed is of record in Dade County, Book 46, at page 332; and on January — 1909, there was executed a certain document between the said defendant Richard J. Bolles and William O'Brien, whereby it is claimed that the latter acquired certain interest in the lands theretofore included in the deed made by said Trustees in favor of said defendant Bolles, less the one section claimed as aforesaid by said defendant Andrus.

And this document executed by said Bolles and by said O'Brien is of record in Palm Beach County, in Book Number 1, of Miscellaneous Records at page 74.

11. And your orators further say that the total area of all the lands so reserved as aforesaid in the year 1891, long before any of the said defendants Bolles, Andrus, Vans Agnew, Bryan and wife, Barrs, Florida Everglades Land Company, or O'Brien appeared upon the scene, said reservation being for the sole interest and benefit of the said Railway Company and its successors in interest and title, being the aggregate of the odd numbered sections in said six townships, computing the acres in each section, is the quantity of 65,594, the detained figures being:

In Township 42, Range 37—		
Sections 1 and 3	1280 acres	
Section 5 fractional	7 "	
Section 7 all in Lake	00 "	
Section 9, fractional	161 "	
Sections 11 and 13	1280 "	
Section 15, fractional	473 "	
Section 17, fractional	423 "	
Section 19, fractional	547 "	
Sections 21, 23, 25, 27, 29	3200 "	
Section 31, fractional	131 "	
Sections 33 and 35	1280 "	
Total acres in Tp. 42, R. 37	8814	8814.
18 complete odd numbered sections in Tp. 42 R. 38		11520.

In Township 43, Range 37—

Section- 1 and 3	1280 acres	
Section 5 fractional	624 "	
Section 7, fractional	394 "	
Sections 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29	7040 "	
Section 31 fractional	82 "	
Sections 33 and 35	1280 "	
Total acres in Tp. 43, R. 37	10700	10700
18 complete odd numbered sections in Tp. 43, Rg. 38		11520
18 complete odd numbered sections in Tp. 43 Rg. 39		11520
18 complete odd numbered sections in Tp. 44 Rg. 40		11520
Grand Total of acres in Six Townships 65,594		65594.

41 and your orators say further that out of said total acres being 65,594 the legal title to 32,386 acres thereof is still in said Trustee- of said Internal Improvement Fund, the description thereof being as following and hereinafter designated as Schedule "T" for convenience of reference; your orators being the equitable owners of said 32,386 acres and entitled to a formal deed from said Trustees to obtain such deed being one of the purposes of this suit, for which relief your orators specifically pray:

Schedule "T."

Section 3	Tp. 42 Rg. 37	640	A.
Section 5 fractional	42	37	7
Section 11	42	37	640
Section 15, fractional	42	37	473
Section 19, fractional	42	37	547
Sections 23 and 27	42	37	1280
Section 31, fractional	42	37	163
Section 35	42	37	640
Sections 3, 7, 11, 15, 19, 23, 27, 31, 35	42	38	5760
Section 3	43	37	640
Section 7 fractional	43	37	394
Sections 11, 15, 19, 23, 27	43	37	3200
Section 31 fractional	43	37	82
Section 35	43	37	640
Sections 3, 7, 11, 15, 19, 23, 31, 35, 27	43	38	5760
Sections 3, 7, 11, 15, 19, 23, 27, 31, 35	43	39	5760
Sections 3, 7, 11, 15, 19, 23, 27, 31, 35	43	40	5760
Total acres in Schedule "T"		32386	A.

42 Deducting this total number of acres still held by said Trustees so far as the legal naked title is concerned, amounting to 32,386 acres, from the total acreage of 65,594 in said six townships the result is found to be 33,208 acres, which the said Trustees have attempted to convey to the other defendants in this cause, the particular parcels being as follows:

To said Vans Agnew, thence to said Florida Everglades Land Company as above set forth, Sections 1, 9, 13, 17, 21, 25, 29, 33 in Township 42, Range 37 being 4424 acres; and Sections 1 and 5 in Township 43, Range 37 being 1264 acres, and making a total claimed by said Florida Everglades Land Company of 5688 acres; and to said defendant R. J. Bolles (defendant O'Brien also claiming a certain interest therein) Sections 1, 5, 9, 13, 17, 21, 25, 29, 33 in Township 42 Range 38; also Sections 1, 5, 9, 13, 17, 21, 25, 29, 33 in Township 43 Range 38; also Sections 1, 5, 9, 13, 17, 21, 25, 29, 33 in Township 43 Range 39, also Sections 9, 13, 21, 25, 29, 33 in Township 43 Range 37; also Sections 1, 5, 9, 13, 17, 21, 25, 29, 33 in Township 44 Range 40; the total number of acres claimed by said defendants Bolles and O'Brien, being 26,880; and the defendant J. E. Andrus claims Section 17, in Township 43, Range 37 containing 640 acres; said lands last described are summarized as Schedule "I" as follows:

Schedule "I."

Total acres claimed by Florida Everglades Land Company..	5688
Total acres claimed by Bolles and O'Brien.....	26880
Total acres claimed by J. E. Andrus.....	640
Total acres claimed by individuals.....	33208

12. And your orators further say that after your orators shall receive a conveyance of the lands in Schedule "T" the legal title to which is still in said defendant Trustees, the total acreage thereof being 32386 as above set forth in detail, there will still remain
43 26750 acres of land in said six townships, formal conveyance to which should be made to your orators in order to give your orators the lands to which they are entitled to receive the legal title, they being already the owners of the equitable title thereto; and that said 26750 acres must be taken from the 33208 acres in said "Schedule" "I" that the percentage of the lands in said Schedule "I" to which your orators are entitled to receive the legal title, your orators being already the owners of the equitable title, is 80 and 5533/10000 per cent; and that therefore your orators are entitled to receive from said Florida Everglades Land Company, 4581.80 acres out of the 5688 acres claimed by the latter; and your orators are likewise entitled to receive from said defendants Bolles and O'Brien 21652.70 acres out of the 26680 acres claimed by the latter; and likewise from said defendant J. E. Andrus 515.50 acres out of the 640 acres claimed by the said Andrus. Said several acres last mentioned to be decreed to your orators as follows: 4581.80 acres; 21652.70 acres; and 515.50 acres; making in all a total of 26750 acres, which added to the 32386 acres in said Schedule "T" will make a grand total of 59,136 acres, belonging to your orators as set forth hereinbefore in detail in this supplemental bill.

13. And your orators further complain and say that each and all of said defendants had full notice of the equities belonging now to your orators, such knowledge on the part of all said defendants

existing long before any claim for any of said lands was ever made, or attempted to be made by any — said deefndants. And by reason — the premises your orators allege that the present Trustees of said Internal Improvement Fund of the State of Florida are Trustees of the legal title to the said 32,386 acres in Schedule "T" for the benefit of your orators; also that the said defendant Florida Everglades Land Company is the holder of the legal title to 4,581.80 acres of land claimed by it as Trustee for your orators; that the defendants Bolles and O'Brien are holders of the legal title to 21,652.70 acres of the land claimed by them as trustees for your orators;
44 and that the defendant J. E. Andrus is Trustee for your orators with respect to the legal title to 515.50 acres of the land claimed by him; and in case the several parties can not agree to the selection of the said three last mentioned pro rata quantities of the land, or pro rate percentages, your orators pray that a Special Master or a Commissioner may be named by this Honorable Court who shall make such selections.

The premises considered, your orators pray that the said present Trustees of the Internal Improvement Fund of the State of Florida may be decreed to hold as Trustees for your orators the said 32,386 acres of land described above as Schedule "T" and that said Trustees be directed to execute and deliver to your orators a proper conveyance thereof; and that the said defendant Florida Everglades Land Company be decreed to hold in trust for your orators 4,581.80 acres of the lands claimed by it; and mentioned in said Schedule "I" and that said last named corporation defendant be directed to execute and deliver to your orators a proper conveyance of said 4,581.80 acres of land after the same shall have been selected as above prayed; that likewise the said defendants Bolles and O'Brien be decreed to hold asTrustees for your orators the legal title to the said 21,652.70 acres of land, above mentioned as part of said Schedule "I" and that they be directed to execute and deliver to your orators a proper deed for the same, after the same shall have been selected as above prayed; and that likewise the said defendant J. E. Andrus shall be decreed to hold in trust for your orators 515.50 acres of the land so claimed by him, and that he be directed to execute and deliver to your orators a proper conveyance for the same, after the same shall have been selected as above prayed; and your orators further pray that the Court shall decree that when said several conveyances were made by said Trustees of said Internal Improvement Fund of the State of Florida to the respective grantees as above set forth, such conveyances were made subject to the superior rights and equities of the parties under whom your orators claim, which superior rights and equities are now rightfully held by your orators as against
45 all said defendants. And your orators further pray, in the alternative, that in case the Court shall be of the opinion that the true rule of conveying to your orators the deficiency in acreage, which has heretofore been mentioned, by the application of percentages among the several defendants other than said Trustees of said Internal Improvement Fund, that when the Court in its superior wisdom will apply the rule of inverse order of alienation, or such other rule as may do justice and equity to all the parties in this

cause, Your orators now submit their rights to this Honorable Court and offer to accept any ruling which this Court may adopt and which shall place in these complainants the legal title to the 32,386 acres of land in said Schedule "T" and also the legal title to 26,750 acres of the other lands in the said six stated Townships mentioned in this Bill and specifically set forth in the said contract of June 22, 1891. And your orators pray for such other and further relief as equity may require and to the Court may seem meet and proper in the premises.

May it please the Court to grant an order requiring each and all of said defendants to answer this supplemental bill, but not under oath the answer under oath being hereby waived, said defendants having heretofore appeared in this cause and having filed demurrers to the said original bill herein.

And your orators as in duty bound will ever humbly pray, etc.

(Signed) F. M. SIMONTON,
ARTHUR F. ODLIN,
Solicitors for Complainants.

Endorsed: In the U. S. District Court, Southern District of Florida. In Chancery. Manila Investment Company, et als., vs. Park Trammell, et al. Supplemental Bill of Complaint, Filed March 3, 1913, E. O. Locke, Clerk.

46 In the United States District Court for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY, a Corporation, and Others,
vs.
PARK TRAMMELL and Others.

Motion to Dismiss.

Now comes the Florida Everglades Land Company, a corporation, one of the defendants in the above entitled cause, and moves the Court to dismiss the bill of complaint, and the supplemental bill of complaint herein on the following grounds:

1. That the facts stated in the supplemental Bill of Complaint and in the bill of complaint herein are insufficient to constitute a valid cause of action in equity.

2. That it appears upon the face of said supplemental bill and said bill of complaint that this Court has no jurisdiction of this cause.

3. That it appears upon the face of said bill and supplemental bill that the requisite diversity of citizenship to maintain the jurisdiction of this court does not exist, and that the action is not one arising under the constitution or laws of the United States.

4. That it does not appear upon the face of said bill or supplemental bill that this action is one arising under the constitution or laws of the United States, but it does appear affirmatively that
47 diversity of citizenship requisite to support the jurisdiction of this Court cannot be invoked without violating Section 639

of the Revised Statutes of the United States, and of the Act of Congress of March 3rd, 1888, denying to this Court cognizance of any suit to recover the contents of a chose in action unless such suit might have been prosecuted in this Court to recover upon such cause of action even though such assignment had not been made.

5. That the complainants have not in and by their said Bill of complaint made or stated such a cause as does or ought to entitle them or any of them to any such relief or discovery as thereby sou-*th* or prayed from or against this defendant.

6. That said bill is without equity.

7. That the complainants have not, as appears by their said bill of complaint, made out or stated any right or title to the relief thereby prayed.

(Signed) E. J. L'ENGLE,
P. D. GASKINS,
Solicitors for said Defendant.

Endorsed: In the U. S. District Court, Southern District of Florida. In Chancery. Manila Investment Company, vs. Park Trammell, and others. Motion to Dismiss (Filed by The Florida Everglades Land Company). Filed March 11, 1913, E. O. Locke, Clerk.

48 In the United States District Court for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY, a Corporation, and Others,
versus
PARK TRAMMELL and Others.

Motion to Dismiss.

Now comes P. A. Vans Agnew, one of the defendants in the above entitled cause, and moves the Court to dismiss the bill of Complaint, and the supplemental bill of Complaint, herein on the following grounds.

1. That the facts stated in the supplemental bill of complaint and in the bill of complaint herein are insufficient to constitute a valid cause of action in equity.

2. That it appears upon the face of said supplemental bill and said bill of complaint that this Court has no jurisdiction of this cause.

3. That it appears upon the face of said bill and supplemental bill that the requisite diversity of citizenship to maintain the jurisdiction of this Court does not exist, and that the action is not one arising under the constitution or laws of the United States.

4. That it does not appear upon the face of said bill or supplemental bill that this action is one arising under the constitution or laws of the United States, but it does appear affirmatively that diversity of citizenship requisite to support the jurisdiction of this Court cannot be invoked without violating Section 639 of the Revised

Statutes of the United States and of the Act of Congress of
49 March 3rd, 1888, denying to this Court cognizance of any suit to recover the contents of a chose in action unless such suit might have been prosecuted in this Court to recover upon such cause of action even though such assignment had not been made.

5. That the complainants have not in and by their said bill of complaint made or stated such a cause as does or ought to entitle them or any of them to any such relief or discovery as thereby sought or prayed from or against this defendant.

6. That said bill is without equity.

7. That the complainants, have not, as appears by their said bill of complaint, made out or stated any right or title to the relief thereby prayed.

(Signed) E. J. L'ENGLE,
P. D. GASKINS,
Solicitors for said Defendant.

Endorsed: In the U. S. District Court, Southern District of Florida. In Chancery. Manila Investment Company, vs. Park Trammell, and others. Motion to Dismiss (Filed by P. A. Vans Agnew). Filed March 11, 1913, E. O. Locke, Clerk.

50 In the United States District Court for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY, a Corporation, and Others,
versus
PARK TRAMMELL and Others.

Motion to Dismiss.

Now comes Nathan P. Bryan, one of the defendants in the above entitled cause, and moves the Court to dismiss the bill of complaint and the supplemental bill of complaint herein on the following grounds;

1. That the facts stated in the supplemental bill of complaint and in the bill of complaint herein are insufficient to constitute a valid cause of action in equity.

2. That it appears upon the face of said supplemental bill and said bill of complaint that this Court has no jurisdiction of this cause.

3. That it appears upon the face of said bill and supplemental bill that the requisite diversity of citizenship to maintain the jurisdiction of this Court does not exist, and that the action is not one arising under the constitution or laws of the United States.

4. That it does not appear upon the face of said bill or supplemental bill that this action is one arising under the constitution or laws of the United States, but it does appear affirmatively that diversity of citizenship requisite to support the jurisdiction of this Court cannot be invoked without violating Section 639 of the
51 Revised Statutes of the United States and of the Act of Congress of March 3rd, 1888, denying to this Court cognizance

of any suit to recover the contents of a chose in action unless such suit might have been prosecuted in this Court to recover upon such cause of action even though such assignment had not been made.

5. That the Complainants have not in and by their said bill of complaint made or stated such a cause as does or ought to entitle them or any of them to any such relief or discovery as thereby sought or prayed from or against this defendant.

6. That said bill is without equity.

7. That the complainants have not, as appears by their said bill of complaint, made out or stated any right or title to the relief thereby prayed.

(Signed) E. J. L'ENGLE,
Solicitors for said Defendants.

Endorsed: In the United States District Court for the Southern District of Florida. In Chancery. Manila Investment Company and others vs. Park Trammell and others. Motion to Dismiss. Filed by N. P. Bryan. Filed March 14, 1913. E. O. Locke, Clerk.

52 In the District Court of the United States for the Southern District of Florida. In Chancery.

MANILLA INVESTMENT COMPANY et als.
vs.
PARK TRAMMELL et al., as Trustees of the Internal Improvement Fund of the State of Florida; RICHARD J. BOLLES et al.

The answer of Park Trammell, Governor; Thomas F. West, Attorney General; William V. Knott, Comptroller; W. A. McRae, Commissioner of Agriculture, and J. C. Luning, State Treasurer of the State of Florida, as Trustees of the Internal Improvement Fund of the State of Florida, defendants, to the original and supplemental bill of complaint of Manilla Investment Company, a corporation existing under the laws of the State of Nevada; Tacony Trust Company, a corporation existing under the laws of the State of Pennsylvania; Henry Disston and E. F. Steck, citizens of the State of Pennsylvania, complainants.

These defendants reserving to themselves all right of exceptions to the said original and supplemental bills of complaint for answer thereto, or to so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto answering say:

1. That they are correctly named in the Supplemental Bill as Governor, Attorney General, Comptroller, Commissioner of Agriculture, and State Treasurer, of the State of Florida, and constituting the Trustees of the Internal Improvement Fund of the State of Florida.

2. As to the matter contained and alleged in the paragraph numbered two of the Supplemental Bill, the defendants say that an act
53 of the Legislature was approved on or about the twelfth day of March, 1879, known as Chapter 3166 of the Laws of Florida.

That said act is carried into the General Statutes of the State of Florida of the year 1906 as Section 622 and to the terms of which these defendants pray leave to refer as often as may be necessary for accuracy and greater certainty.

These defendants however move to dismiss the second paragraph of the said Supplemental Bill, upon the ground that the matter therein alleged is not of or concerning a material fact accruing after the filing of the original bill, nor is it alleged that the Complainants were ignorant of the existance of any fact therein alleged when said original bill was filed.

3. That as to so much of the matter contained and alleged in the paragraph numbered one of the Original Bill and paragraph numbered three of the Supplemental Bill, as relates to the alleged incorporation under the laws of Florida of a corporation named The St. Cloud Sugar Belt Railway Company, and that it was duly authorized to construct, maintain and operate a line of railroad from Kissimmee in the County of Osceola, State of Florida to Runnymede, in said County, and as is alleged in said Supplemental Bill to Narcoosa in said County a distance of 15.4 miles, upwards of ten miles of which line of railroad had been constructed and was in operation previous to the 31st day of May, 1889, and the entire distance of 15.4 miles were completed and in operation prior to the 12th day of June, 1891, and on the said 12th day of June, 1891, after the approval of the State Engineer employed by the said Trustees of the Internal Improvement Fund of the said 15.4 miles of Railroad so constructed (as aforesaid, the said Trustees did order a conveyance to be made to said Railway Company of the Alternate Sections for said 15.4 miles so constructed) operated and approved, these defendants are without knowledge.

But these defendants say that as to such allegations the Trustees of the Internal Improvement Fund on the 21st day of November, 1904, adopted a resolution to the effect that the said Trustees
54 of the Internal Improvement Fund had no legal right, authority or power to bind their successors by means of certificates or instruments of writing or obligations other than duly executed deeds passing the legal title to lands of the Funds, and that all certificates or other instruments of like character tenor and effect issued by the predecessors of these Trustees should be and the same were thereby declared to be of no binding force or effect and were by said resolution specifically and separately revoked and annulled.

These defendants however move to dismiss the said paragraph of the Supplemental Bill which paragraph is numbered three, upon the ground that the matter therein alleged is not of or concerning a material fact accruing after the filing of the original bill, nor is it alleged that the Complainants were ignorant of the existance of any fact therein alleged when said original bill was filed.

These defendants say that the act of the Legislature of the State of Florida referred to in the first paragraph of the original Bill of complaint and known as Chapter 3996 (Number 151) approved the 31st day of May, 1889, is unconstitutional and void in that the title of said act is not sufficiently broad to appraise the Legislature

and the people that a land grant to be selected from the State at large was included thereunder and that such grant was not within the subject expressed in the title to said act.

4. These defendants say that as to the allegations contained in the paragraph numbered two of the original bill and as to all of the allegations contained in the paragraph numbered four of the Supplemental Bill, these defendants are without knowledge and require strict proof of the same.

These defendants move to dismiss the paragraph numbered four of the Supplemental Bill upon the ground that the matter therein alleged, is not of or concerning a material fact accruing after the filing of the original bill, nor is it alleged that the Complainants were ignorant of the existance of any fact therein alleged
55 when the said original bill was filed.

5. These defendants say that as to each and every the allegations contained in paragraphs five and six of the Supplemental bill, they are without knowledge and require strict proof of the same.

These defendants however move to dismiss the fifth and sixth paragraphs of the said supplemental bill upon the ground that the matter therein alleged is not of or concerning a material fact accruing after the filing of the original bill, nor is it alleged that the complainants were ignorant of the existance of such facts or any of them as therein alleged when said original bill was filed.

6. These defendants deny that the St. Cloud and Sugar Belt Railway Company by reason of anything alleged in the original or supplemental bills became the equitable owner of 59,136 acres of land to be taken from the odd numbered sections in the townships named in said bills. And these defendants deny that the said Railway Company acquired any vested right to a deed to any such lands as soon as the United States should execute a patent or patents to the State of Florida conveying said lands. But these defendants allege the truth to be that the St. Cloud and Sugar Belt Railway Company was never entitled to any lands on account of the construction of its line of railroad aforesaid, nor were the Trustees of the Internal Improvement Fund at any time obligated to convey to said Railway Company any lands acquired by the State of Florida under the said Act of Congress of September 28, 1850, nor any other lands; that Chapter 3996 of the Laws of Florida of 1889, entitled "An Act to enlarge and extend the franchise of the St. Cloud and Sugar Belt Railway Company" approved May 31, 1889, is unconstitutional and void as to the provisions contained in Sections 4, 5, and 6 of said Act, and in so far as said Act seeks to make provision for the conveyance of said Railroad Company of 3,840 acres per miles of the lands granted to the State of Florida by the
56 United States under Act of Congress of September 28, 1850, to be taken from the alternate sections lying on each side within six miles of the line of railway, and in so far as said Act provides that any deficiency of such lands lying along and within the distance aforesaid of the said line of railroad to make up the number of acres included in the attempted grant to said Company

should be taken from lands owned by the State, or that might thereafter accrue to the State and not appropriated to other existing corporations; and in so far as the Trustees of the Internal Improvement Fund were required; upon the completion of each section of ten miles of said railway, to issue deeds conveying to the said Company the proportion of lands to which they might become entitled under the Act, because the title to said Act is not sufficiently broad to appraise the Legislature and the people that a land grant to be selected from the State at large would be included thereunder, and that such grant was not within the subject expressed in the title to said Act.

These defendants move to dismiss the said original and supplemental bills upon the ground that the said Act, Chapter 3996 of the Laws of Florida of 1889, under which the complainants seek the relief prayed for in said bills, *in* unconstitutional and void as to the provisions contained in Section- 4, 5, and 6 of said Act, and in so far as provision is made in said sections for the conveyance to said Railroad Company of any lands granted to the State of Florida by the United States under Act of Congress of September 28, 1850.

These defendants, further answering, say that by the resolution of the Trustees of the Internal Improvement Fund, referred to in the fifth paragraph of the supplemental bill, the said Trustees did not obligate themselves, nor their successors, to convey any lands to the said St. Cloud and Sugar Belt Railway Company; that the said Railway Company had not earned any lands by reason of the construction of its said line of railroad at the time of the adoption of the said resolution, nor were any lands due the said railroad either by the State or the Trustees of the Internal Improve-
57 ment Fund at that time; that said resolution was not supported by any consideration, and that there was no authority of Law for the adoption of same. These defendants say that on November 22, 1904, and before the filing of the bill in this cause, the Trustees of the Internal Improvement Fund adopted a reso-
58 lution whereby it was resolved, that all the rights that may have at any time existed in the Atlantic and Gulf Coast *and* Canal and Okeechobee Land Company, to any further conveyance of land had been forfeited, and that all acts of previous Trustees whether by resolution or otherwise, providing for the issue *of* conveyance of land to said company in excess of the area of land conveyed prior to 1896, were annulled and declared void.

These defendants say that as to the allegations contained in paragraph numbered four, of the original bill, and paragraph numbered eight, of the supplemental bill, relating to conveyance by the St. Cloud and Sugar Belt Railway Company to Hamilton Disston, of an undivided half interest in 59,136 acres of land, and as to the date of such deed and the place of its record, and a conveyance by said Railway Company of the remaining undivided one-half interest in said lands to John J. Dunne, and as to the date of such alleged deed, and as to the conveyance by Dunne and Cramer to the Manila Investment Company of the undivided one-half interest alleged to

have been acquired by the said John J. Dunne, and as to the date of such deed and the place of its record, and as to the undivided half interest alleged to have been acquired by Hamilton Disston in said lands, and the passage of such interest to Tacony Trust Company, Henry Disston, and E. F. Steck, as Trustees and Executors under the last will and testament of the said Hamilton Disston, and as to the decease of the said Hamilton Disston, these defendants are without knowledge.

But these defendants deny that the complainants are the real owners of the said 59,136 acres of land described in said bills, and deny that they are entitled to receive from the said Trustees of the Internal Improvement Fund a deed therefor.

These defendants admit that a demand was made upon the Trustees of the Internal Improvement Fund prior to the filing of the original bill for a deed conveying said lands to the complainants, and that the Trustees refused and declined to comply with the alleged resolution of June 22, 1891, but they deny that their
59 declination to make such deed or to be bound by said resolution was wrongful and unjust. These defendants also deny that such refusal on their part violated any rights of the complainants, and deny that they were entitled, as of law, all right to the conveyance asked for. These defendants deny that by such refusal on their part to convey said lands to the complainants that the complainants have been denied any rights under the Constitutions of the United States or the State of Florida, and deny that they have been deprived of their property without due process of law

7. These defendants, answering the allegations contained in the paragraph numbered five, of the original bill, and in the paragraph numbered nine, of the supplemental bill, say that on or about the 23rd day of December, 1908, the Trustees of the Internal Improvement Fund did enter into an agreement with Richard J. Bolles which provided for the sale of about a half million acres of land, and that the said Trustees did execute a deed to the said Richard J. Bolles, conveying to him about five hundred thousand acres of land, and included in such deed the lands referred to in said bills, but these defendants say deed to the said Richard J. Bolles was made for the purpose of raising funds to defray the expenses incurred by them in the drainage and reclamation of the swamp and overflowed lands then remaining in the Fund, and acquired by the State of Florida, under the said Act of Congress, of September 28, 1850, and in pursuance of the duty and obligation resting upon the said Trustees of the Internal Improvement Fund by the provisions of Chapter 610, Laws of Florida, of 1855, to make such arrangements, for the drainage of the swamp and overflowed lands as in their judgment was most advantageous to the Internal Improvement Fund and the settlement and cultivation of the land; that the lands described in said bills were swamp and overflowed lands and were acquired by the State of Florida under the provisions of said Act of Congress of September 28, 1850, and by the provisions of Chapter 610, Laws of Florida of the year 1855, they were charged
60 with the trust of drainage and reclamation; that said trust was a public trust, and that the Trustees of the Internal

Improvement Fund were, at the time of the execution of said deed, actually and actively engaged in the work of draining and reclaiming said lands and had entered into contracts requiring the expenditure of large sums of money for the purpose of carrying on said work of drainage and reclamation to the end that said trust might be performed and fulfilled.

8. These defendants answering the allegations contained in paragraph numbered 6, of the original bill, and paragraph numbered 10, of the supplemental bill, admit that the Trustee on or about December 15, 1908, executed a deed to P. A. Vans Agnew conveying the lands described in said deed, and to Nathan P. Bryan the undivided interest in certain lands in said deed described, but as to the allegations that Nathan P. Bryan, and his wife, executed a deed to J. M. Barrs, and that J. M. Barrs conveyed the same to the Florida Everglades Land Company, and as to the allegation that there was a contract of partnership entered into between Richard J. Bolles, and William O'Brien, these defendants are without knowledge. These defendants deny that the lands conveyed by the Trustees as aforesaid to the said Vans Agnew and Bryan belonged to the complainants, or that the complainants had any right or interest therein.

9. These defendants answering the allegations contained in paragraph numbered 7, of the original Bill, and paragraph numbered 11, of the supplemental bill, say that the lands therein described were embraced in a list of lands filed with the Trustees of the Internal Improvement Fund of Florida by the Atlantic and Gulf Coast Canal and Okeechobee Land Company, on December 1, 1888, for reserve to the said Drainage Company, under a contract between that Company and the said Trustees of August 1, 1888.

That prior to the date of such contract there existed between the Trustees and the said corporation a contract for the drainage
61 and reclamation of certain lands, and that such original contract was amended and modified by the said agreement of August 1, 1888, and by the provisions of such several agreements the said Company was to receive lands from the Trustees of the Internal Improvement Fund in the proportion of one acre of land for every 25 cents expended by such company in the work *of* contemplated by the said agreement. That a large tract of land was reserved by the Trustees of the Internal Improvement Fund out of which, it was the purpose of the Trustees, pursuant to said agreement, to pay to the said Company for the work to be done by it under the said agreements. That at the time the reservation of said lands was made by the Trustees, the same had not been patented by the United States to the State of Florida, and the Trustees had no legal right to deal with nor concerning them. That said Company failed to comply with the agreements and conditions on its part to be performed, and at a subsequent date to August, 1888, the United Land Company, a corporation, acquired all the rights and interest of said Atlantic and Gulf Coast Canal and Okeechobee Land Company under said agreements and on December 15, 1908, compromised and settled with the Trustees of the Internal Improvement Fund all of the claims of the Atlantic and Gulf Coast Canal and

Okeechobee Land Company, or any Company or person claiming through or under said company.

10. These defendants deny each and every allegation contained in paragraph numbered nine of the original bill, and paragraph numbered twelve, of the supplemental bill.

These defendants, answering further the said original and supplemental bills, say that the lands described in said bills and therein sought to be subjected to the claim of the complainants, do not lie within six miles of the said St. Cloud and Sugar Belt Railway Company's line of Railroad. That said railroad never complied with the provisions of the Act of 1879, Chapter 3166, Laws of Florida, and never became entitled to receive from the Trustees of
62 the Internal Improvement Fund any lands under or by virtue of said act. That the lands described in said bills were subject to the trusts of drainage and reclamation imposed by Chapter 610, laws of 1855, and that said Act vested the Trustees of the Internal Improvement Fund with the power and duty to fix the price of said lands and to make such arrangements for the drainage of the same as in their judgment was most advantageous to the Internal Improvement Fund and the settlement and cultivation of the lands; and that at the time of the filing of the original bill, and prior thereto and the date of the alleged construction of said Railroad, the Trustees of the Internal Improvement Fund, acting within their statutory authority, and in the exercise of their descretion and with due regard to the trusts committed to them, were actually and actively engaged in making such arrangements for the drainage of the swamp and overflowed lands as in their judgment was most advantageous to the Internal Improvement Fund and the settlement and cultivation of the lands; and the Trustees are now actually and actively engaged in executing said trust and making arrangements for the drainage of said lands; and that all the swamp and overflowed lands now contained in the said Internal Improvement Fund are necessary and needful for the execution by the Trustees of the Internal Improvement Fund of the work undertaken and begun by them of draining and reclaiming the swamp and overflowed lands, and accomplishing the settlement and cultivation thereof; and that the said Trustees at the time of the filing of the bill in this cause had assumed obligations and entered into contracts requiring and demanding the expenditure of large sums of money from time to time, which said obligations and contracts were entered into and assumed by the said Trustees of the Internal Improvement Fund in the execution and performance of the said public trust designated by Chapter 610, of the Laws of Florida, of making such arrangements for the drainage of the swamp and overflowed
63 lands as, in the judgment of the Trustees would be most advantageous to the Internal Improvement Fund, and the settlement and cultivation of said lands. That whatever claim or right, interest, or demand that the complainants may have on account of the construction of the line of road of the said St. Cloud and Sugar Belt Railway Company are subject to the rights of all creditors of the Internal Improvement Fund and to the trust to which said Fund is

applicable and subject, under the said Act approved January 6, 1855, and known as Chapter 610.

10. These defendants move to dismiss the original and supplemental bills upon the following grounds:

1.

That it affirmatively appears from the original and supplemental bills that this court is without jurisdiction to hear and determine this controversy.

2.

That it affirmatively appears from said bills that the plaintiffs claim as assignees of St. Cloud and Sugar Belt Railway Company, a Florida corporation, and as such the said assignees are seeking to enforce an alleged contract between the Trustees of the Internal Improvement Fund of the State of Florida, predecessors in office of these defendants, and the said St. Cloud and Sugar Belt Railway Company, a corporation organized under the laws of the State of Florida.

3.

That it does not affirmatively appear from the bill of complaint that the St. Cloud and Sugar Belt Railway Company, assignors, of the complainants in this cause, might have maintained a suit in this court to enforce the alleged contract upon which the plaintiff's action is based.

4.

That it affirmatively appears from the bill of complaint in this cause that the complainants claim the benefit of a contract alleged to have been entered into between the Trustees of the Internal Improvement Fund of the State of Florida and the St. Cloud
64 and Sugar Belt Railway Company, a Florida corporation, both parties to said alleged contract being citizens and residents of the State of Florida.

5.

That it affirmatively appears from the bill of complaint that the St. Cloud and Sugar Belt Railway Company was a Florida corporation, and the assignors of the complainants, and that the said railroad company could not have maintained its suit in this Court against these defendants upon the contract alleged to have — entered into between them.

6.

That it affirmatively appears from the bill of complaint that the State of Florida is the real party at interest in this controversy within the meaning of the 11th Amendment to the Constitution of the United States, and that this Court is without power for that reason to hear and determine this cause.

7.

That Sections 4, 5, and 6 of Chapter 3996, of the Laws of Florida of the year 1889, under which the St. Cloud and Sugar Belt Railway Company, the assignors of the complainants, based its claim to the lands mentioned in the bills of complaint, are unconstitutional and void.

8.

That the complainants have not in and by their said bills made or stated such a case as entitled them in a Court of Equity to any relief against these defendants as to the matters contained in said bills, or any such matters.

And these defendants, having fully answered the original and supplemental bills in said cause, pray to be hence dismissed with their reasonable costs, and charges in this behalf most wrongfully sustained.

(Signed) PARK TRAMMELL, *Governor;*
W. V. KNOTT, *Comptroller,*
(By W. S. ELLIS;)
65 J. C. LUNING, *Treasurer;*
T. F. WEST,
Attorney General;
W. A. McRAE,
Commissioner of Agriculture,
As Trustees of the Internal Improvement Fund of the State of Florida.

F. F. WEST AND
W. H. ELLIS,
Solicitors for Defendant.

Endorsed: United States District Court, Southern District of Florida, In Chancery. Manila Investment Company, et al., Complainants, vs. Park Trammell, et al., as Trustees of the Internal Improvement Fund of the State of Florida, et al., defendants. Answer of Trustees Internal Improvement Fund. Filed April 5, 1913. E. O. Locke, Clerk.

66 In the District Court of the United States for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY et al.
vs.
PARK TRAMMELL et al., as Trustees of the Internal Improvement Fund of the State of Florida; RICHARD J. BOLLES, et al.

The Answer of Richard J. Bolles, One of the Defendants, to the Original and Supplemental Bill of Complaint of Manila Investment Company, a Corporation Existing under the Laws of the State of Nevada; Tacony Trust Company, a Corporation Existing under the Laws of the State of Pennsylvania; Henry Disston and E. F. Steck, Citizens of the State of Pennsylvania, Complainants.

This defendant, reserving to himsef all right of exceptions to said original and supplemental bills of complaint for answer thereto, or to so much, or such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, says:

1.

That he adopts the answer of Park Trammell, Thomas F. West, William V. Knott, W. A. McRae, and J. C. Luning, defendants to the original and supplemental bills in said cause, and each and every the allegations, statements, denials and motions therein contained, as his answer to said original and supplemental bills, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

(Signed) R. J. BOLLES,
By W. H. ELLIS.

(Signed) W. H. ELLIS,
Solicitor for Defendant.

67 Endorsed: United States District Court, Southern District of Florida, In Chancery. Manila Investment Company, et al., Complainants, vs. R. J. Bolles, et al., Defendants. Answer of Richard J. Bolles. Filed April 5, 1913. E. O. Locke, Clerk.

68 In the District Court of the United States for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY and Others, Complainants,
vs.
TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA and Others, Defendants.

Bill for Relief, etc.

Stipulation.

It is hereby agreed by and between counsel for the Complainants and counsel for the defendants in the cause above entitled that the

amended and supplemental bill which has been delivered to the Clerk of said Court for filing, and copies of which have been received by the said several counsel for defendants, may be filed by the Clerk at any time before the rule day in January, 1914; and the said defendants are to be allowed until the rule day in February, 1914, in which to file such motion, answer, or other pleadings as they may desire.

Dated and signed this 13th day of December 1913.

(Signed) N. B. K. PETTINGILL AND
A. F. ODLIN,
Counsel for Complainants.
W. H. ELLIS,
Counsel for Defendants, to wit, Trustees of the Internal Improvement Fund and R. J. Bolles.
——— ———,
Counsel for the Defendants, to wit, —.
E. J. L'ENGLE,
Counsel for Defendants, to wit, N. P. Bryan et ux., Fla. Everglades Land Co., P. A. Vans Agnew, and Wm. O'Brien.

Endorsed: In the U. S. District Court, Southern District of Florida, In Chancery. Manila Investment Company, et als., vs. Trustees Internal Improvement Fund of Florida, et als. Stipulation. Filed Dec. 15, 1913. E. O. Locke, Clerk.

69 In the United States District Court of the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY et al.
vs.
PARK TRAMMEL et al.

Bill to Enforce Trust.

Amended and Supplemental Bill.

To the Honorable R. M. Call, Judge of the Court aforesaid, in Chancery Sitting:

The Manila Investment Company, a corporation, the Tacony Trust Company, a corporation, and Henry Disston and E. F. Steck, the last three named parties suing as Trustees under the last will and testament of Hamilton Disston, deceased, duly appointed as such by and under an order of the Orphans' Court of the County of Philadelphia and State of Pennsylvania, complainants, by leave of this Court, first had, bring this their amended and supplemental bill of complaint, which is to substitute and supersede all previous bills, against Park Trammel, Thomas F. West, William V. Knott, W. A. McRae, and J. C. Luning, as Trustees of the Internal Improvement Fund of the State of Florida, Richard J. Bolles, William O'Brien, John L. Andrus, the Florida Everglades Land Company, a corpora-

tion, P. A. Vans Agnew, J. M. Barrs, and Nathan P. Bryan, and Julia S. Bryan, his wife, defendants.

And thereupon your orators complain*ant*, allege:

70

I.

That your orator, Manila Investment Company, is a corporation organized and existing under the laws of the State of Nevada and a citizen of that State duly empowered to do business in the State of Florida, your orator Tacony Trust Company is a corporation organized and existing under the laws of the State of Pennsylvania and, together with your orators Henry Disston and E. F. Steck, is a citizen of said state; that the defendants, Park Trammel, Thomas F. West, William V. Knott, W. A. McRae, and J. C. Luning are all citizens of the State of Florida, residing at Tallahassee in said State, are respectively governor, attorney-general, comptroller, commissioner of agriculture and treasurer of said State, and by reason thereof are the sole members of said Board of Trustees, of the Internal Improvement Fund of said State; that the defendants, Richard J. Bolles, and William O'Brien are citizens of the State of Colorado, and defendant John E. Andrus, a citizen of the State of New York; that the defendant Florida Everglades Land Company is a corporation organized and existing under the laws of Florida and a citizen of said State; and that the defendants P. A. Vans Agnew, J. M. Barrs, N. P. Bryan and Julia S. Bryan, his wife, are also severally citizens of the State of Florida, residing in said State.

II.

That at the time of the filing of the original bill in this cause the members of said Board of Trustees of the Internal Improvement fund consisted of A. W. Gilchrist, as governor of Florida, Park Trammel as its attorney-general, and the above named William V. Knott, W. A. McRae, and J. C. Luning occupying the same official positions respectively, as herein above alleged, but that on or about the 6th day of January, 1913, said A. W. Gilchrist ceased to be governor and Park Trammel ceased to be attorney-general of said State and were succeeded by the said Park Trammel as Governor and Thomas F. West as attorney-general, who still occupy those positions respectively; for which reason your orators obtained

71 leave to file the supplemental bill heretofore filed in this cause.

III.

That on the 1st day of September, 1881, a corporation, then organized and existing under the laws of Florida by the name of The Atlantic & Gulf Coast Canal and Okeechobee Land Company (hereinafter for convenience called the "Land Company") entered into a contract with the then Board of Trustees of said Internal Improvement Fund under the authority conferred upon said Board by the Act of the Legislature of the State of Florida approved January 6, 1855, and known as Chapter 610, Laws of Florida, whereby

said Land Company agreed to perform certain work of drainage for the benefit of the swamp and overflowed lands ceded to said State by the Act of Congress of September 28, 1850, and said Board agreed to convey to said Land Company, as compensation for such work, certain portions of said swamp and overflowed lands to the maximum extent of 4,000,000 acres at an agreed price of 25 cents per acre. That thereafter certain differences arose between said Board of Trustees and said Land Company as to the extent of performance on the part of the latter under said contract, which led to the enactment by the Legislature of Florida of the Act of February 16, 1885, being Chapter 3639, Laws of Florida, as amended by the Act of June 2, 1887, being Chapter 3788 of the Laws of Florida, whereby said Board of Trustees was authorized and empowered to make any such settlement, arrangement, contract or compromise as it might deem best to secure and protect the interest of the State and the Fund as well as the prompt and vigorous prosecution of the work of drainage and reclaimation; and under the authority of said act, said Board of Trustees did, on the 1st day of August, 1888, make and enter into a certain modified contract with said Land Company, known as the "Compromise Agreement" which was "to take the place of any and all contracts and agreements there-
72 tofore made between said Trustee and said Company," and whereby it was provided, among other things, that the "Drainage reserve" set apart for the benefit of the Land Company, under its contract should be reduced from 4,000,000 to 2,000,000 acres, that the Land Company should file with the Board of Trustees its selection of lands to an amount which, together with lands already conveyed, would equal said amount of 2,000,000 acres, that as the price of said land so to be thereafter reserved and conveyed said Land Company was to expend a further sum of $206,264.00 at the rate of not less than $40,000.00 per year and upon the expenditure of each $40,000.00 was to be entitled to a conveyance from said Board of Three-fifths of the land earned thereby at the rate of twenty-five cents per acre, and that, upon the performance in full of said compromise agreement by said Land Company, it was to be entitled to a conveyance of the entire balance of said land to make the aggregate of 2,000,000 acres as aforesaid, such balance to be so earned by the expenditure of said sum of $206,264.00, being 825,056 acres; all of which will more fully appear from a true copy of said compromise agreement herewith filed as Exhibit "A" and prayed to be taken and considered as a part hereof.

IV.

That thereafter the said Compromise Agreement was fully performed and complied with by both parties thereto, and such compliance on the part of said Land Company was recognized and admitted by the then Board of Trustees of said Internal Improvement Fund at its meeting held at Tallahassee, Florida, on the 10th day of January, 1894, at which meeting the final accounts submitted by said Land Company were duly approved, and said Land Company was declared to have complied with its contract and to be entitled to

the ownership of said 825,056 acres of land and to a conveyance of the same whenever the State of Florida should receive patents therefor from the United States. And your orators allege that of said specified acreage much more than 59,136 acres had been earned by said Land Company prior to the 24th day of April, 1891.

73

V.

That on the 19th day of February, 1874, there was approved an Act of the Legislature of Florida providing a General Law for the Incorporation of Railroads & Canals, known as Chapter 1897, of the Laws of Florida, and thereafter on the 12th day of March, 1879, the same was amended by an Act known as Chapter 3166 of the Laws of Florida, by which there was granted to any railroad company which had been or might be incorporated under said General Railroad Incorporation Act of February 19, 1874, the alternate section within six miles on each side of such lines of railroad as might be constructed in accordance with such plans and specifications as should be agreed upon between the Trustees aforesaid and the directors of such railroad company, with the privilege of making up any deficiency in quantity of such lands from the like alternate sections within twenty miles of such lines.

VI.

That on or about the — day of ——, 188—, a corporation was duly incorporated under the laws of Florida above referred to, by the name of St. Cloud Sugar Belt Railway Company (hereinafter for convenience called the "Railway Company") with power to construct maintain, and operate a line of railroad from Kissimmee to Narcoossee, both now in the County of Osceola, State of Florida, the same being a distance of 15.4 miles; that more than ten miles of said line of railroad had been constructed and were in operation previous to the 31st day of May, 1889, by virtue whereof said railway was entitled to the land grant corresponding thereto under the Act of March 12, 1879, aforesaid; that under such condition of affairs the Legislature of Florida passed the act of May 31, 1889, being Chapter 3996 of the Laws of Florida, entitled "An act to enlarge and extend the franchises of the St. Cloud Sugar Belt Railway Company" whereby the rights already existing in said Railway Company under previously existing laws were confirmed, enlarged and extended, including the right to the grant of lands
74 thereby provided, the right or franchise of said Railway Company being by said later act merely enlarged so that the lands previously donated to it might be selected from any lands then owned by the State or that might thereafter accrue to it not appropriated to other existing corporations; and that thereafter the entire distance of 15.4 miles from Kissimmee to Narcoossee was completed and in operation prior to the 12th day of June, 1891; the entire line of said railway having been built by the directors of said company in accordance with plans and specifications approved by said Board of Trustees, and in all other respects conforming with the require-

ments of said Board, the Act of January 6, 1855, and subsequent laws governing the same subject.

VII.

That on the said 12th day of June, 1891, after the approval by the State Engineer employed by said Board of Trustees of said 15.4 miles of railroad so constructed as aforesaid, the then Board of Trustees ordered a conveyance to be made to said Railway Company, upon its request, of the alternate sections granted for the construction of the specified number of miles of railway line according to said act of February 19, 1874, as amended by the Act of March 12, 1879, as aforesaid; and thereafter the Commissioner of Agriculture of Florida reported to said Board of Trustees that there were no lands within six miles of said line of railway available for said Railway Company under its grant, whereupon, at a meeting of said Board held on the 22nd day of June, 1891, said Railway Company presented to said Board a communication from said Land Company, a literal copy of which is as follows, towit:

"The Atlantic and Gulf Coast Canal and Okeechobee Land Company."

317 Bullett Building.

PHILADELPHIA, PENNA., April 24, 1891.

"To the Trustees of the Internal Improvement Fund of the State of Florida.

75 GENTLEMEN: "In order to aid the St. Cloud Sugar Belt Railway Company, by enabling them to obtain some lands under their franchise and encourage the further extension of their railway, this Company is willing and does hereby release so much of the lands now reserved to them under their Drainage Contract in the following:

Township, South.	Range, East.
42	
43	37, 38
44	37, 38, 39 40

as your Honorable Board may convey to the said St. Cloud Sugar Belt Railway Company on account of lands that may be due them on railway now constructed.

Yours respectfully,

"(Signed) HAMILTON DISSTON, *President.*"

Whereupon the said Board, at the meeting aforesaid, adopted a resolution granting the request contained in the above communication which resolution was literally as follows: towit:

"Whereas, the St. Cloud Sugar Belt Railway Company has completed 15.4 miles of its road; and is, under its charter, entitled to

3,840 acres of the lands granted to the State of Florida under the Act of Congress of September 28, 1850, for each mile of road it constructs such lands to be taken from the alternate sections within six miles of its line of road, and in case of a deficiency of such lands within the distance aforesaid, then to be taken from any such lands owned by the State not appropriated to other existing corporations; and whereas the Commissioner of Agriculture has reported that there are no unappropriated lands of the class designated within six miles of the portion of the said Company's railway which has been constructed; and

"Whereas, the Atlantic and Gulf Coast Canal and Okeechobee Land Company has filed with the Board written authority
76 for them to convey to the said St. Cloud Sugar Belt Railway Company the lands now reserved for said Land Company under its drainage contract with the Board, and to which it will be entitled under said drainage contract, in the following townships, to-wit:

Township, South.	Range, East.
42	37, 38
43	37, 38, 39
44	40.

Now therefore, be it,

Resolved: by this Board, That they will, under the authority aforesaid, convey to said St. Cloud Sugar Belt Railway Company, the quantity of lands to which it is now entitled, to be taken from the odd numbered sections in the townships aforesaid, as soon as patents are obtained from the United States for the State Selections in said townships.

VIII.

That, by virtue of such action and resolution of said Board of Trustees as aforesaid, the said Board contracted and covenanted with said Railroad Company to substitute said Railway Company for said Land Company, as the grantee and cestui que trust of the lands theretofore earned and agreed by said Board to be conveyed to said Land Company, in said specified townships and ranges to the extent of 59,136 acres, that being the amount recognized thereby as due said Railway Company, for its 15.4 miles of railway line at 3,840 acres per mile and to hold in trust for, and to convey said quantity of land to, said Railway Company whenever the same should be patented by the United States to the State of Florida; and that by virtue thereof the said Lumber Company became divested of the equitable ownership of said 59,136 acres vested in it under its said contract of August 1, 1888, and the said Railroad Company became the equitable owner in its stead of said 59,136 acres of land to be taken from the odd numbered sections in the six townships so desig-
77 nated, and said Railway Co., acquired the vested right to a proper deed thereto, as soon as the United States should execute and deliver its patent to the same. And your orators allege that each and all of said six townships were at that time within

the limits of the County of Dade and are now within the limits of the County of Palm Beach, State of Florida, by reason of the later creation of said County of Palm Beach from a portion of said County of Dade, and are also within the limits of the Southern District of Florida as established by the Congress of the United States for the purpose of defining the jurisdiction of this Honorable Court.

IX.

That, as the said 59,136 acres so transferred were included within the total of 825,056 acres which were at that time reserved for said Land Company and were afterwards declared to have been earned by it, and as said action of said Board merely changed the beneficial owner thereof, such action in effect neither increased nor diminished the obligations of the State, but merely made the Railroad Company instead of the Land Company the cestui qui trust of said 59,136 acres and reduced by the same amount the 825,056 acres theretofore held in reserve for the benefit of the Land Company.

X.

That all of said odd numbered sections in said six townships are included within a patent issued by the United States to the State of Florida under the terms of said Act of Congress of September 28, 1850, and dated the 29th day of April, 1903; but that your orators did not know of the issuance of said patent until shortly before the institution of this suit, as said patent has not yet been recorded in the Land Records of either of said Counties of Dade or Palm Beach.

78 XI.

That within nine months after the said contract between said Board of Trustees and said Railway Company as above set forth had been made, the latter made its selection of the 59,136 acres out of the larger quantity in said six townships reserved for said Land Company, and thereupon conveyed to Hamilton Disston, a one-half undivided interest in said 59,136 acres of land by deed dated March 15, 1892, and recorded in the land records of said Dade County, wherein said lands were then situated in Book "S" at page 149; that on the same 15th day of March, A. D. 1892, said Railway Company conveyed its remaining one-half undivided interest in the same land to one John J. Dunne, who, joined by his wife, Kate S. Dunne, conveyed the same to your orator, Manila Investment Company, by deed dated January 15, 1912, and recorded in the land records of Palm Beach County, in Deed Book No. 15 at page 489.

That as to the other half undivided interest first above mentioned as conveyed to said Hamilton Disston the same passed to your orators Tacony Trust Company, Henry Disston, and E. F. Steck, as trustees and executors under the last will and testament of the said Hamilton Disston, upon the death of the latter in the year —: and that both said deeds of conveyance of said undivided interest executed by said Railroad Company on March 15, 1892, as aforesaid,

and which were duly recorded in the proper land record in the respective places above indicated long before said Board of Trustees had transferred any of said lands therein described to any of the defendants or other persons, contained recitals specifically referring to the resolutions adopted by said Board of Trustees on the 22nd day of June, 1891, and set forth verbatim in paragraph VII above, and showing that said Railway Company claimed title to said lands by virtue of the resolution of the Board of Trustees aforesaid:

Wherefore your orators allege that they are now and have been since 1894, the real owners of said 59,136 acres of land and have been since 1903 entitled to receive from said Board of Trus-
79 tees or from the other defendants now holding title as its assignees, a proper deed to same; that while being such owners and before the commencement of this suit, demand was made upon the then Board of Trustees, being the same five Trustees named in the original bill filed in this cause, for such deed; that such demand was made not only by these present orators for themselves but also by said Railway Company acting for and on behalf of its grantees aforesaid, but said Board of Trustees declined and refused to comply with the resolutions and conclusive action which years before it had itself adopted and ratified, basing its refusal upon the unconstitutionality of the Act of May 31, 1889, and the validity in law of its resolution adopted on November 22, 1904, annulling and declaring void any Act of said Board authorizing any conveyance of land for the benefit of the Land Company subsequent to 1896; and that such denial and refusal on the part of said Board of Trustees to execute the trust reposed by law in them as agent of the State of Florida by conveying to your orators the legal title to said described lands violates rights secured to your orators by the Constitution of the United States, and such refusal on the part of said Board to execute and deliver to your orators a proper deed or deeds to such lands, taken in connection with the transfers of title to said lands attempted to be made by said Board to other parties as hereinafter set forth, is an attempt to violate the obligation of the contract entered into by said Board with said Railway Company by its said resolution of June 22, 1891, contrary to the provisions of Section 10, of Article I of said Constitution, and is also an attempt to deprive your orators of their property without due process of law, contrary to section one of the Fourteenth Amendment to the said Constitution.

XIII.

And your orators further say that on December 24th, 1908, the then members of the said Board of Trustees, not being the same persons who as such were made defendants in this cause, and not being the same persons who made said contract or agreement of June 22,
1891, entered into and signed a certain agreement with the
80 defendant Richard J. Bolles which agreement provided, besides other things, for the sale and drainage of an enormous area of land, being over half a million acres, and said agreement was recorded in the land records of Dade County, in Book 46 page 232; and on the day following said Trustees executed an instrument

purporting to be a deed of conveyance in favor of said defendant Bolles, whereby they attempted to convey to said Bolles over half a million acres of lands, and included in said pretended deed 43 sections of land belonging to your orators at the present time, and at the time of the commencement of this suit, the numbers of said 43 sections being hereinafter set forth; and said document was recorded in the land records of said Dade County, in Book 46 at page 240; and on said 23rd day of December 1908, said Bolles executed in favor of said Board of Trustees an instrument purporting to be a mortgage covering the same lands as were embraced in the so-called deed in favor of said Bolles, said pretended mortgage being stated to be given to secure the payment of the sum of $950,000 and alleged therein to be given to secure the payment of what is called by the parties a "Drainage Note" and said so-called mortgage is of record in said Dade County records, in Book 12 of Mortgages at page 452. Later on May 18, 1910, said Trustees released from the pretended lien of said mortgage one section of said land, towit; Section 17, in Township 43, South, Range 37 East, by a document of partial satisfaction, found recorded in the records of said Palm Beach County, Book number 2 of Satisfaction of Mortgages, at page 165; and your orators allege that said mortgage appears to be in force, so far as the same can effect the said lands therein described, except the said Section 17, being 640 acres, and being the same land mentioned in a deed made with covenants of warranty executed by the defendant Bolles in favor of the defendant John E. Andrus, recorded in Palm Beach County, records, Deed Book 7 page 131.

81 XIII.

And your orators further complain and say that on December —- 1908, a deed was executed by the then Trustees in favor of the defendant P. A. Vans Agnew, purporting to convey ten sections of said lands really owned by your orators, the said ten sections being hereinafter described, which deed is of record in Dade County, Book 46 at page 211; and on the — day of December, 1908, said defendant, P. A. Vans Agnew, executed a deed in favor of the defendant Nathan P. Bryan, purporting to convey an undivided one-half interest in said ten sections which last mentioned deed is also of record in Dade County, Book 46 page 248; and on February 6, 1909, said defendants P. A. Vans Agnew, Nathan P. Bryan and Julia S. Bryan; joined in a warranty deed in favor of the defendant J. M. Barrs, purporting to convey the same ten sections last referred to; and on March 1st, 1909, said defendant, J. M. Barrs, executed in favor of the defendant, Florida Everglades Land Company, a deed purporting to convey with covenants of warranty the same ten sections of land referred to; which deed is of record in Dade County, in Book 46, at page 332, and on January, 1909, there was executed a certain document between the said defendants Richard J. Bolles and William O'Brien, whereby it is claimed that the latter acquired a certain interest in the lands theretofore included in the deed made by said Trustees in favor of said defendant Bolles, less the one section claimed as aforesaid by said defendant Andrus. And this docu-

ment executed by said Bolles and by said O'Brien is of record in Palm Beach County, in Book number 1 of Miscellaneous Records at page 74.

XIV.

And your orators further say that the total a-res of all the lands so reserved as aforesaid in the year 1891, long before any of the said defendants, Bolles, Andrus, Vans Agnew, Bryan and wife, Barrs, Florida Everglades Land Company, or O'Brien appeared upon the scene, said reservation being for the sole interest and
82 benefit of the said Railway Company and its successors in interest and title, being the aggregate of the odd numbered sections in said six townships, computing the acres in each section, is the quantity of 65,594, acres, the detailed figures being as follows:

In Township 42, Range 37.

Sections 1 and 3	1,280	acres.	
Section 5, fractional	7	"	
Section 7 all in Lake	00	"	
Section 9 fractional	161	"	
Sections 11 and 13	1,280	"	
Section 15, fractional	473	"	
Section 17, fractional	423	"	
Section 19, fractional	547	"	
Sections 21, 23, 25, 27, 29	3,200	"	
Section 31, fractional	163	"	
Sections 33 and 35	1,280	"	
Total acres in Tp. 42, R. 37	8,814		8,814
18 complete odd numbered sections in Tp. 42, Rg. 38			11,520

In Township 43, Range 37.

Sections 1 and 3	1,280	acres.	
Section 5, fractional	624	"	
Section 7, fractional	394	"	
Secs. 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29	7,040	"	
Section 31, fractional	82	"	
Sections 33 and 35	1,280	"	
Total acres in To. 43 R. 37	10,700		10,700
18 complete odd numbered sections in Tp. 43, Rg. 38			11,520
18 complete odd numbered sections in Tp. 43, Rg. 39			11,520
18 complete odd numbered sections in Tp. 44, Rg. 40			11,520
Grand total of acres in Six Townships, 65,594			65,594

And your orators say further that out of said total acres being 65,594, the legal title to 32,386 acres thereof is still in said Trustees of said Internal Improvement Fund, the description thereof being as follows and hereinafter designated as "Schedule "T" for conven-

ience of reference; your orators being the equitable owners of said 32,386 acres and entitled to a formal deed from said Trustees, to obtain such deed being one of the purposes of this suit, for which relief your orators specifically pray:

83 Schedule "T."

	Tp.	Rg.	A.	
Section 3	42	37	640	
Section 5, fractional	42	37	7	
Section 11	42	37	640	
Section 15, fractional	42	37	473	
Section 19, fractional	42	37	547	
Section- 23 and 27	42	37	1,280	
Section 31, fractional	42	37	163	
Section 35	42	37	640	
Sections 3, 7, 11, 15, 19, 23, 27,31,35.	42	38	5,760	
Section 3	43	37	640	
Section 7, fractional	43	37	394	
Section 11, 15, 19, 23, 27	43	37	3,200	(3,200)
Section 31, fractional	43	37	82	
Section 35	43	37	640	
Section 3, 7, 11, 15, 19, 23, 27, 31, 35.	43	38	5,760	
Section 3, 7, 11, 15, 19, 23, 27,31,35.	43	39	5,760	
Sections 3, 7, 11, 15, 19, 23, 27,31,35.	44	40	5,760	
Total acres in Schedule "T"			32,386	A.

Deducting this total number of acres still held by said Trustees, so far as the legal naked title is concerned, amounting to 32,386 acres, from the total acreage of 65,594 in said six townships, the result is found to be 33,308 acres, which the said Trustees have attempted to convey to the other defendants in this cause, the particular parcels being as follows:

To said Vans Agnew, thence to said Florida Everglades Land Company, as above set forth, Sections 1, 9, 13, 17, 21, 25, 29, 33, in Township 42, Range 37, being 4,424 acres; and Sections 1 and 5 in Township 43, Range 37, being 1,264 acres, and making a total claimed by said Florida Everglades Land Company of 5,688 acres, and to said defendant R. J. Bolles (defendant O'Brien also claiming a certain interest therein) Sections 1, 5, 9, 13, 17, 21, 25, 29, 33, in Township 42, Range 38; also Sections 1, 5, 9, 13, 17, 21, 25, 29, 33, in Township 43, Range 38; also Sections 1, 5, 9, 13, 17, 21, 25, 29,
33, in Township 43, Range 39; also Sections 9, 13, 21, 25,
84 29, 33, in Township 43, Range 37; also Sections 1, 5, 9, 13, 17, 21, 25, 29, 33 in Township 44, Range 40, the total number of acres claimed by said defendants Bolles and O'Brien being 26,880; and the defendant J. E. Andrus claims Section 17, in Township 43 Range 37, containing 640 acres; said lands last described are summarized as Schedule "I" as follows:

Schedule "I."

Total acres claimed by Florida Everglades Land Company..	5,688
Total acres claimed by Bolles and O'Brien.....	26,880
Total acres claimed by J. E. Andrus.....	640
Total acres claimed by individuals.....	33,208

XV.

And your orators further say that after your orators shall receive a conveyance of the lands in Schedule "T" the bare legal title to which is still in said defendant Trustees, the total acreage thereof being 32,386 as above set forth in detail, there will still remain 26,750 acres of land in said six townships formal conveyance to which should be made to your orators in order to give to your orators the lands to which they are entitled to receive the legal title, they being already the owners of the equitable title thereto; and that said 26,750 acres must be taken from the 33,208 acres in said Schedule "I" that the percentage of the lands in said Schedule "I" to which your orators are entitled to receive the legal title, your orators being already the owners of the equitable title, is 80 and 5,533/10,000 per cent; and that therefore your orators are entitled to receive from said Florida Everglades Land Company 4,581.80 acres out of the 5,688 acres claimed by the latter; and your orators are likewise entitled to receive from said defendants Bolles and O'Brien 21,652.70 acres out of the 26,680 acres claimed by the latter; and likewise from said defendant J. E. Andrus 515.50 acres
85 out of the 640 acres claimed by the said Andrus. Said several acres last mentioned to be decreed to your orators, as follows: 4,581.80 acres; 21,652.70 acres, and 515.50 acres; making in all a total of 26,750 acres, which added to the 32,386 acres in said Schedule "T" will make a grand total of 59,136 acres, belonging to your orators as set forth hereinbefore in this amended and supplemental bill.

XVI.

And your orators further complain and say that each and all of said defendants had full notice of the equities belonging now to your orators, both from the land records of said counties of Dade and Palm Beach and from the records of said Board of Trustees as aforesaid, such knowledge on the part of all said defendants existing long before any claim for any of said lands was ever made or attempted to be made by any of said defendants. And by reason — the premises your orators allege that the present Trustees of said Internal Improvement Fund of the State of Florida are trustees of the legal title to the said 32,386 acres in said Schedule "T" for the benefit of your orators; also that the said defendant Florida Everglades Land Company is the holder of the legal title to 4,581.80 acres of the land claimed by it as trustee for your orators; that the defendants Bolles and O'Brien are holders of the legal title to 21,652.70 acres of the land claimed by them as trustees for your orators: and that the

defendant J. E. Andrus is trustee for your orators with respect to the legal title to 515.50 acres of the land claimed by him; and in case the several parties can not agree to the selection of the said three last mentioned pro rata quantities of land, or pro tanto percentages your orators pray that a special Master or a Commissioner may be named by this Honorable Court who shall make such selections.

The premises considered, your orators pray that the said present trustees of the Internal Improvement Fund of the State of Florida, may be decreed to hold as Trustees of a naked trust for your orators the said 32,386 acres of land described above as Schedule "T"
86 and that said Trustees be directed to execute and deliver to your orators a proper conveyance thereof; that the said defendant Florida Everglades Land Company be decreed to hold in trust for your orators 4,581.80 acres, of the lands claimed by it, and mentioned in said Schedule "I," and that said last named corporation, defendant be directed to execute and deliver to your orators a proper conveyance of said 4,581.80 acres of land after the same shall have been selected as above prayed; that likewise the said defendants Bolles and O'Brien be decreed to hold as trustees for your orators the legal title to the said 21,652.70 acres of land, above mentioned as part of said Schedule "I," and that they be directed to execute and deliver to your orators a proper deed for the same, after the same shall have been selected as above prayed; and that likewise the said defendant J. E. Andrus shall be decreed to hold in trust for your orators 515.50 acres of the land so claimed by him, and that he be directed to execute and deliver to your orators a proper conveyance for the same, after the same shall have been selected as above prayed, and that the mortgage grants aforesaid by defendant Bolles to the defendant Trustees, etc., dated December 23, 1908, and recorded in Book "K" of Mortgages, page 452, of Dade County, be declared void and cancelled. And your orators further pray that the Court shall decree that when said several conveyances were made by said Trustees of said Internal Improvement Fund of the State of Florida to the respective grantees as above set forth, such conveyances were made subject to the superior rights and equities of the parties under whom your orators claim, which superior rights and equities are now rightfully held by your orators as against all said defendants.

And your orators further pray, in the alternative, that in case the Court shall be of the opinion that the true rule of conveying to your orators the deficiency in acreage, which has heretofore been mentioned, is not by the application of percentage among the several defendants other than said Trustees of said Internal Improvement Fund, that then the Court in its superior wisdom will apply
87 the rule of inverse order of alienation, or such other rule as may do justice and equity to all the parties to this cause. Your orators now submit their rights to this Honorable Court and offer to accept any ruling which this Court may adopt and which shall place in these complainants the legal title to the 32,386 acres of land in said Schedule "T" and also the legal title to 26,750 acres of the other lands in the said six stated Townships mentioned in this

Bill and specifically set forth in the said contract of June 22, 1891. And your orators pray for such other and further relief as equity may require and to the Court may seem meet and proper in the premises.

May it please your Honor to grant unto your orators a writ of subpœna in Chancery or other proper process directed to the said defendants, or such of them as have not already appeared to the original or supplemental bills therein, commanding him or them upon a certain day therein to be named and under a certain penalty therein to be expressed to be and appear before this Honorable Court and then and there to answer this amended and supplemental bill; and to order and direct each and every defendant already before the Court to answer or present such other pleading as to the Court may seem meet.

And your orators will ever humbly pray.

(Signed) ARTHUR F. ODLIN,
N. B. K. PETTINGILL,
Counsel for Complainants.

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EXHIBIT "A."

Whereas, the Trustees of the Internal Improvement Fund of Florida were directed by the Act of June 2nd, 1887, Chapter 3788, to make an amicable adjustment, if it could be had, of the differences between the State and Trustees and the Atlantic & Gulf Coast Canal & Okeechobee Land Company, concerning the drainage and reclamation of certain lands heretofore conveyed by such Trustees to said Company, and reported by a commission appointed by the Governor, in pursuance of the Act of February, 16th, 1885, Chapter 3689, as not having been drained and reclaimed, and said Trustees having been specially authorized and empowered by said first mentioned Act to make any such settlement, arrangement, contract or compromise in the premises as they may deem best to secure and protect the interest of the State and the Fund, as well as the prompt and vigerous prosecution of the work of drainage and reclamation, and said Trustees and said Company being desirous of making such a settlement as will secure those ends, adjust past differences and prevent the same from arising in the future, the said Atlantic & Gulf Coast Canal & Okeechobee Land Company, and E. A. Perry, Governor of the State of Florida, W. D. Barnes, Comptroller, E. S. Grill, Treasurer, C. L. Mitchell, Commissioner of Lands and Immigration, and C. M. Cooper, attorney-general, of said State, as Trustees of the Internal Improvement Fund of Florida, for themselves and their successors, in consideration of the premises, and the agreements hereinafter specified, as well as the large expenditures in drainage and reclamation, heretofore made by said Company, have made and entered into the following compromise and contract, which is to take the place of any and all contracts and agreements heretofore made between said Trustees and said Company.

I. The drainage reserve of said Company shall be reduced so as to

secure to said Company a total acreage of two million acres including lands heretofore conveyed to said Company, to be selected by said Company in a body, as near as may be, of alternate Sec-
89 tions, within the reserve heretofore held for said Company under its contract with such Trustees, such selection to be filed by said Company with said Trustees, within ninety days after the formal execution of this contract, and said Trustees shall hold the lands so selected in reserve for said Company for the purposes and according to the terms of this contract.

Said Company releases to said Trustees all other lands heretofore held in reserve for it, which other lands are estimated at four million acres, this release to take effect as soon as the selection of lands for the reduced reserve has been filed with the said Trustees by said Company as aforesaid.

II. As a compromise and adjustment of the differences between the said Company and the State and Trustees as to lands heretofore conveyed by the Trustees of the Internal Improvement Fund to said Company, or to any person on its account, said Company agrees, in consideration of the release of any and all claims of said Trustees on said heretofore conveyed lands, to be executed as hereinafter specified, that said Company will expend in drainage and reclamation, with the approval of such Trustees, as hereinafter provided, the sum of one hundred and twenty-five thousand dollars, less the sum of moneys expended by said Company in the work of drainage and reclamation since the report of said commission, which expenditure is estimated up to July 1st, 1888, at fifty-five thousand dollars, and said Trustees agree that, in consideration of such expenditure, the Trustees of the Internal Improvement Fund will, when such total expenditure is so made, execute such release to said Company, not less than forty thousand dollars of such expenditure on this account to be made by said Company, in the first year of twelve calendar months after the formal execution of this contract, and the total of said sum to be expended within two years after said formal execution thereof. Provided, however, that if the said Company shall at any time give bond with sureties to said Trustees, satisfactory to the said Trustees, conditioned for the expenditure of the remainder of the said sums of one hundred and twenty-five thousand dollars which shall then remain unexpended, in accordance with the terms
90 of this contract providing for such expenditures, the said Trustees will thereupon execute and deliver the said release to said Company. Nothing herein contained is to be construed as an acknowledgment by said Company that said lands have not been drained and earned by it, nor, if said Company fails to perform this article of this contract, shall said Trustees be deemed to have waived any right or claim they have had heretofore to said lands.

II-. Said Company further agrees to expend in drainage and reclamation of the lands which shall be selected and reserved for it as aforesaid, with the approval of said Trustees as hereinafter provided, the sum of two hundred and six thousand two hundred and sixty-four dollars, which is to be so expended that, with the expendi-

tures provided for in the second article hereof, there shall be an expenditure in the prosecution of the work of not less than forty thousand dollars in each year after the formal execution of this contract, in consideration of which expenditure, said Trustees agree to convey to said Company so much of said lands, to be selected and reserved as aforesaid, as shall be earned by said Company at the rate of an acre of land for each twenty-five cents of expenditure, but no land to be considered as earned by expenditures except upon the full expenditure of each forty thousand dollars of said two hundred six thousand two hundred and sixty-four dollars by said Company, as aforesaid, and upon the expenditure by said Company of each such forty thousand dollars, said Trustees, will, at the request of said Company, convey to said Company three fifths of the land which would be earned thereby at the rate of twenty-five cents per acre as aforesaid, reserving two fifths thereof, which shall, at the option of said Trustee, be forfeited by said Company to said Trustees if said Company shall fail to make the total expenditure agreed upon, as agreed, or shall otherwise fail to observe and perform this contract. And upon said Company observing and performing this contract in full, without breach or forfeiture, and making the full expenditure of two hundred and six thousand two hundred and sixty-four dollars, in addition to the said expenditures agreed upon in the second article hereof
91 on account of lands heretofore conveyed by the Trustees to said Company, which expenditures on account of lands heretofore so conveyed is to be made before any lands are to be considered as earned on account of the further expenditures provided for by this third article, as herein agreed and specified, said Trustees shall and will convey to said Company the full amount of land earned by the expenditure of said two hundred and six thousand two hundred and sixty-four dollars at the rate of twenty-five cents per acre as aforesaid, to be selected by said Company in a body as near as may be of alternate sections, from the lands then held in reserve for it, which it is estimated, will, with the land previously conveyed to said Company, make a total of two million acres.

IV. All the expenditures herein provided for shall be made subject to the verification by and approval, as to the economy and bona fides of the expenditures, of an engineer to be appointed by the Trustees of said Fund, and who may at any time, and from time to time, be removed, and another substituted by them. The compensation of such engineer in the premises shall be fixed by the Trustees of said Fund and be paid, as they shall designate, by said Company, from the moneys agreed to be expended by said Company in said work of drainage as aforesaid.

V. The said Company is to have the right to throw up embankments, make and construct sluice-ways, dykes and cuts and canals in, on and through all or any of the lands of said Internal Improvement Fund, and to use any timber, earth, stone or other material on said lands, belonging to said Fund, for said purposes of drainage and reclamation.

Executed this first day of August, A. D. Eighteen hundred and Eight-eight.

E. A. PERRY, *Governor;*
W. D. BARNES, *Comptroller;*
E. S. CRILL, *Treasurer;*
C. L. MITCHELL, *Com. of L. T.;*
C. M. COOPER, *Attorney-General;*
ATLANTIC & GULF COAST CANAL & OKEECHOBEE LAND COMPANY,
By CHARLES H. GRESS, *President.*

Signed, sealed and delivered in presence of:
L. B. WOMBWELL.
D. LANG.

Attest:
RICHARD SALINGER, *Secretary.*

92 Endorsed: U. S. District Court, Southern District of Florida. Manila Investment Co., et al., vs. Park Trammel, et al.; Amended & Supplemental Bill. Tendered for filing November 29, 1913, Filed as stipulated December 16, 1913, E. O. Locke, Clerk.

93 In the United States District Court for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY
vs.
PARK TRAMMELL et al., as Trustees of the Internal Improvement Fund of the State of Florida, et al.

Motion to Dismiss.

Now comes Park Trammell, Governor; W. V. Knott, Comptroller; T. F. West, Attorney General; J. C. Luning, State Treasurer, and W. A. McRae, Commissioner of Agriculture, as Trustees of the Internal Improvement Fund of the State of Florida, defendants in the above entitled cause and move to dismiss the amended and supplemental bill of complaint therein upon the following grounds, towit:

1st. That the facts stated in the amended and supplemental bill of complaint herein are insufficient to constitute a valid cause of action in equity.

2nd. That it appears upon the face of said amended and supplemental bill of complaint that this Court has no jurisdiction of this cause.

3rd. That it appears upon the face of said amended and supplemental bill that the requisite diversity of citizenship to maintain the jurisdiction of this Court does not exist, and that the action is not one arising under the constitution or laws of the United States.

4th. That it does not appear upon the face of said amended and

supplemental bill that this action is one arising under the constitution or laws of the United States, but is does appear affirmatively that diversity of citizenship requisite to support the jurisdiction of this Court cannot be invoked without violating Section 24, of the Judicial Code of the United States, denying to this Court cognizance of any suit to recover the contents of a chose in action unless such suit might have been prosecuted in this Court to recover upon such cause of action even though such assignment had not been made.

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5th. That the complainants have not in and by their said amended and supplemental bill of complaint made or stated such a cause as does or ought to entitle them or any of them to any such relief or discovery as thereby sought or prayed from or against this defendant.

6th. That said amended and supplemental bill is without equity.

7th. That the complainants have not, as appears by their said amended and supplemental bill of complaint, made out or stated any right or title to the relief thereby prayed.

8th. That it affirmatively appears from the amended and supplemental bill of complaint that the State of Florida is the real party in interest and that the suit is in effect one against the State of Florida.

(Signed) W. H. ELLIS,
Solicitor for Park Trammell et al., as Trustees of the Internal Improvement Fund of the State of Florida.

January 30th, 1914.

Endorsed: In the United States District Court for the Southern District of Florida. In Chancery. Manila Investment Company vs. Park Trammell et al., Trustees Internal Improvement Fund et al. Motion to Dismiss Amended and Supplemental Bill of Complaint. Filed January 30, 1914, E. D. Dodge, Clerk.

95 In the United States District Court for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY
vs.
PARK TRAMMELL et al., as Trustees of the Internal Improvement Fund, et al.

Motion to Dismiss.

Now comes R. J. Bolles, one of the defendants in the above entitled cause and moves the Court to dismiss the amended and supplemental bill of complaint therein upon the following grounds, towit:

1st. That the facts stated in the amended and supplemental bill of complaint herein are insufficient to constitute a valid cause of action in equity.

2nd. That it appears upon the face of said amended and supplemental bill of complaint that this Court has no jurisdiction of this cause.

3rd. That it appears upon the face of said amended and supplemental bill that the requisite diversity of citizenship to maintain the jurisdiction of this Court does not exist and that the action is not one arising under the constitution or laws of the United States.

4th. That it does not appear upon the face of said amended and supplemental bill that this action is one arising under the constitution or laws of the United States, but it does appear affirmatively that diversity of citizenship requisite to support the jurisdiction of this Court cannot be invoked without violating Section 24, of
96 the Judicial Code of the United States denying to this Court cognizance of any suit to recover the contents of a chose in action unless such suit might have been prosecuted in this Court to recover upon such cause of action even though such assignment had not been made.

5th. That the complainants have not in and by their said amended and supplemental bill of complaint made or stated such a cause as does or ought to entitle them or any of them to any such relief or descovery as thereby sought or prayed from or against this defendant.

6th. That said amended and supplemental bill is without equity.

7th. That the complainants have not, as appears by their said amended and supplemental bill of complaint, made out or stated any right or title to the relief thereby prayed.

(Signed) W. H. ELLIS,
Solicitor for R. J. Bolles.

January 30, 1914.

Endorsed: In the United States District Court for the Southern District of Florida. In Chancery. Manila Investment Company vs. Park Trammell et al., Trustees Internal Improvement Fund, et al. Motion to Dismiss Amended and Supplemental Bill of Complaint. Filed January 30, 1914, E. D. Dodge, Clerk.

97 In the United States District Court for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY, a Corporation, and Others,
vs.
PARK TRAMMELL and Others.

Motion to Dismiss.

Now comes William O'Brien, one of the defendants in the above entitled cause, and moves the Court to dismiss the amended and supplemental bill of complaint herein on the following grounds:

1. That the facts stated in the amended and supplemental bill of complaint herein are insufficient to constitute a valid cause of action in equity.

2. That it appears upon the face of said amended and supplemental bill of complaint that this Court has no jurisdiction of this cause.

3. That it appears upon the face of said amended and supplemental bill that the requisite diversity of citizenship to maintain the jurisdiction of this Court does not exist, and that the action is not one arising under the constitution or laws of the United States.

4. That it does not appear upon the face of said amended and supplemental bill that this action is one arising under the constitution or laws of the United States, but it does appear affirmatively that diversity of citizenship requisite to support the jurisdiction of this Court cannot be invoked without violating Section 24, of the Judicial Code of the United States, denying to this Court cognizance of any suit to recover the contents of a chose in action unless
98 such suit might have been prosecuted in this Court to recover upon such cause of action even though such assignment has not been made.

5. That the complainants have not in and by their said amended and supplemental bill of complaint made or stated such a cause as does or ought to entitle them or any of them to any such relief or discovery as thereby sought or prayed from or against this defendant.

6. That said amended and supplemental bill is without equity.

7. That the complainants have not, as appears by their said amended and supplemental bill of complaint, made out or stated any right or title to the relief thereby prayed.

(Signed) E. J. L'ENGLE,
Solicitors for said Defendant.

Endorsed: In the U. S. District Court for the Southern District of Florida. In Chancery. Manila Investment Company et al. vs. Park Trammell et al. Motion to Dismiss. Filed January 31, 1914, E. D. Dodge, Clerk.

99 In the United States District Court for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY, a Corporation, and Others,
vs.
PARK TRAMMELL and Others.

Motion to Dismiss.

Now comes P. A. Vans Agnew, one of the defendants in the above entitled cause, and moves the Court to dismiss the amended and supplemental bill of complaint on the following grounds:

1. That the facts stated in the amended and supplemental bill of complaint herein are insufficient to constitute a valid cause of action in equity.

2. That it appears upon the face of said amended and supple-

mental bill of complaint that this Court has no jurisdiction of this cause.

3. That it appears upon the face of said amended and supplemental bill that the requisite diversity of citizenship to maintain the jurisdiction of this Court does not exist, and that the action is not one arising under the constitution or laws of the United States.

4. That it does not appear upon the face of said amended and supplemental bill that this action is one arising under the constitution or laws of the United States, but it does appear affirmatively that diversity of citizenship requisite to support the jurisdiction of this Court cannot be invoked without violating Section 24 of
100 the Judicial Code of the United States, denying to this Court cognizance of any suit to recover the contents of a chose in action unless such suit might have been prosecuted in this Court to recover upon such cause of action even though such assignment had not been made.

5. That the complainants have not in and by their said amended and supplemental bill of complaint made or stated such a cause as does or ought to entitle them or any of them to any such relief or discovery as thereby sought or prayed from or against this defendant.

6. That said amended and supplemental bill is without equity.

7. That the complainants have not, as appears by their said amended and supplemental bill of complaint, made out or stated any right or title to the relief thereby prayed.

(Signed) E. J. L'ENGLE,
Solicitor for Defendants.

Endorsed: In the U. S. District Court for the Southern District of Florida. In Chancery. Manila Investment Company et al. vs. Park Trammell et al. Motion to Dismiss. Filed January 31, 1914. E. D. Dodge, Clerk.

101 In the United States District Court for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY, a Corporation, and Others,
vs.
PARK TRAMMELL and Others.

Motion to Dismiss.

Now comes Nathan P. Bryan and Julia S. Bryan, his wife, defendants in the above entitled cause, and move the Court to dismiss the amended and supplemental bill of complaint herein on the following grounds.

1. That the facts stated in the amended and supplemental bill of complaint herein are insufficient to constitute a valid cause of action in equity.

2. That it appears upon the face of said amended and supple-

mental bill of complaint that this Court has no jurisdiction of this cause.

3. That it appears upon the face of said amended and supplemental bill that the requisite diversity of citizenship to maintain the jurisdiction of this Court does not exist, and that the action is not one arising under the constitution or laws of the United States.

4. That it does not appear upon the face of said amended and supplemental bill that this action is one arising under the constitution or laws of the United States, but it does appear affirmatively that diversity of citizenship requisite to support the jurisdiction of this Court cannot be invoked without violating Section 24, of the Judicial Code of the United States, denying to this Court cognizance
102 of any suit to recover the contents of a chose in action unless such suit might have been prosecuted in this Court to recover upon such cause of action even though such assignment had not been made.

5. That the complainants have not in and by their said amended and supplemental bill of complaint made or stated such a cause as does nor ought to entitle them or any of them to any such relief or discovery as thereby sought or prayed from or against this defendant.

6. That said amended and supplemental bill is without equity.

7. That the complainants have not, as appears by their said amended and supplemental bill of complaint made out or stated any right or title to the relief thereby prayed.

(Signed) E. J. L'ENGLE,
Solicitor for said Defendant.

Endorsed: In the U. S. District Court for the Southern District of Florida, In Chancery. Manila Investment Company, et al. vs. Park Trammell, et al. Motion to Dismiss. Filed February 2, 1914. E. D. Dodge, Clerk.

103 In the District Court of the United States for the Southern District of Florida, in Chancery Sitting.

MANILA INVESTMENT COMPANY et al., Complainants,
vs.
PARK TRAMMELL et al., as Trustees, etc., et al., Defendants.

Whereas, upon the filing by the Complainants of their Amended and Supplemental Bill in the above cause, a copy of the same was served upon the undersigned solicitor for J. M. Barrs, one of the defendants, but no further pleading has yet been filed on behalf of said defendant:

And whereas, the defendant Board of Trustees and other defendants have filed Motions to Dismiss which are now under submission to the Court, and the solicitors for the respective parties undersigned are willing that the same issues be submitted on behalf of said defendant, Barrs:

Now, therefore, it is hereby stipulated between solicitors for complainants and solicitor for said defendant J. M. Barrs, that said de-

fendant shall adopt on his behalf the Motions to Dismiss made on behalf of other defendants and now under submission to the Court, and that said defendant shall be bound by the decision on said Motions as though interposed in his behalf.

Dated at Jacksonville, this 22nd day of June, 1914.

(Signed) A. F. ODLIN,
N. B. K. PETTINGILL,
Solicitors for Complainants.

(Signed) P. H. ODOM,
Solicitor for Defendant J. M. Barrs.

104 Endorsed: In the District Court of the United States for the Southern District of Florida, In Chancery. Manila Investment Company, et al., Complainants, vs. Park Trammell, et al., as Trustees etc., et al., Defendants. Stipulation. Filed June 22, 1914. E. D. Dodge, Clerk.

105 In the District Court of the United States for the Southern District of Florida, in Chancery Sitting.

MANILA INVESTMENT COMPANY et al.
vs.
PARK TRAMMELL et al., Trustees, etc., et al.

Bill to Enforce Trust, etc.

Come now the complainants and, by leave of the Court granted at the oral argument of said cause upon motion to dismiss, amend their "Amended and Supplemental Bill" in the following particulars, towit:

I.

By substituting in Paragraph I, fifth line from the end, for the word "Florida" the words "The State of Colorado" so that that allegation shall read,

"that the defendant Florida Everglades Land Company is a corporation organized and existing under the laws of the State of Colorado."

II.

By inserting in the blank left in the first line of Paragraph VI on page 6, the date: 5th day of September, 1885.

III.

By inserting on page 20, after the Paragraph numbered XVI, a paragraph to be numbered and worded as follows:

"XVII.

That the matter in controversy in this suit exceeds exclusive of interest and costs, the sum or value of Fifty Thousand Dollars."

106 (Signed) A. F. ODLIN,
N. B. K. PETTINGILL,
Counsel for Complainants.

"Complainants allowed to make the above amendments."

(Signed) "R. M. CALL, *Judge.*"

June 30, 1914.

Endorsed: United States District Court, Southern District of Florida. Manila Investment Company, et al. vs. Park Trammell, et al. Amendment to Amended & Supplemental Bill. Filed Jun-30, 1914. E. D. Dodge, Clerk.

107 In the United States District Court, Southern District of Florida. In Chancery.

No. 168. R-45.

MANILLA INVESTMENT COMPANY
vs.
PARK TRAMMELL et al.

This cause comes on to be heard upon motions of defendants to dismiss amended and supplemental bill of complaint, on various grounds.

In the arguments and briefs filed by Complainant every ground of jurisdiction of this court was abandoned, except the action of the Trustees of the Internal Improvement Fund of the State of Florida, violated the fourteenth amendment of the constitution of the United States by taking property without due process of law.

In my judgment the case made by the bill of complaint under consideration is similar to that made in the case of St. Paul Gas Light Co. vs. St. Paul, 181 U. S. 142, and City of Dawson vs. Columbia Avenue Savings Fund, etc., Co., 197 U. S. 178, towit: the claim of a violation of contract and not taking property without due process of law, and that therefore this Court has no jurisdiction to enforce such rights as complainant may have.

It is therefore, ordered, adjudged and decreed that the motion to dismiss for want of jurisdiction in this Court be and the same is hereby granted.

Done this July 1, 1914.

(Signed) RHYDON M. CALL,
District Judge.

108 Endorsed: U. S. District Court, Southern District of Florida. In re Manila Investment Co. vs. Park Trammell, et al. Order granting Motion to Dismiss for want of Jurisdiction. Filed July 1, 1914. E. D. Dodge, Clerk.

109 In the District Court of the United States for the Southern District of Florida. In Chancery.

No. 168. R-45.

MANILA INVESTMENT COMPANY et al.
vs.
PARK TRAMMELL et al., as Trustees, etc., et al.

Petition of Appeal.

Come now The Manila Investment Company, a corporation, and the Tacony Trust Company, a corporation, Henry Disston and E. F. Stock, as Trustees under the last will and testament of Hamilton Disston, deceased, complainants, by their solicitors Arthur F. Odlin, and N. B. K. Pettingill, and, conceiving themselves to be aggrieved by the decree of dismissal made and entered in this cause on the 1st day of July, A. D., 1914, whereby it was adjudged and decreed that complainants had not by their allegations shown any deprivation of their property without due process of law, and that this Court was therefore without jurisdiction of this cause, petition this court for an order allowing said complainants to prosecute an appeal from said decree to the Honorable the Supreme Court of the United States, pursuant to the statutes of the United States in such cases made and provided, and especially to Section 238 of the Judicial Code enacted March 3, 1911, fixing the amount of the bond to be given upon said appeal, and directing that a transcript of the record and proceedings upon which said decree was made, duly authenticated, may be sent in due course to said Supreme Court of the United States.

And your petitioners will ever pray.

110 (Signed) A. F. ODLIN,
N. B. K. PETTINGILL,
Solicitors for Complainants.

Tampa, Florida, July 20, 1914.

Endorsed: United States District Court, Southern District of Florida. Manila Investment Company, et al., vs. Trustees of I. I. Fund, et al. Petition of Appeal. Filed July 22, 1914, E. D. Dodge, Clerk.

111 In the District Court of the United States for the Southern District of Florida. In Chancery.

No. 168. R-45.

MANILA INVESTMENT COMPANY et al.
vs.
PARK TRAMMELL et al., Trustees, etc., et al.

Assignment of Errors.

Comes now the complainants and, upon the appeal this day prayed for, assign the following as the errors committed by this Court in the proceedings and entry of said decree upon which they will rely:

I.

The Court erred in granting the motions to dismiss made by the defendants.

II.

The Court erred in conceiving that the allegations of the bill of complaint showed no violation of the Fourteenth Amendment of the Constitution of the United States by taking the property of complainants without due process of law.

III.

The Court erred in conceiving that it was without jurisdiction or power to entertain this suit.

IV.

The Court erred in dismissing the bill of complaint, for want of jurisdiction.

And, in order that the foregoing assignment of errors may be a[p]
appear of record, the complainants present the same to the
112 Court and pray that such disposition may be made thereof as
is in accordance with the statutes in such case made and provided, and that said decree of dismissal entered by the Court may be reversed.

(Signed) A. F. ODLIN,
N. B. K. PETTINGILL,
Counsel for Complainants-Appellants.

Endorsed: United States District Court, Southern District of Florida. Manila Investment Company, et al., vs. Trustees of Internal Improvement Fund, et al., Assignment of Errors. Filed July 22, 1914, E. D. Dodge, Clerk.

113 In the District Court of the United States for the Southern District of Florida. In Chancery.

No. 168. R-45.

MANILA INVESTMENT COMPANY et al.
vs.
PARK TRAMMELL et al., as Trustees, etc., et al.

Order Allowing Appeal.

The application of counsel for the complainants for the allowance of an appeal to the Supreme Court of the United States, coming on this day to be heard, and an assignment of errors being therewith filed, it is ordered that an appeal to the Court be allowed under the provisions of Section 238 of the Judicial Code; that the bond upon said appeal be fixed at $250.00 *Dollars;* and that, upon the giving of

said bond, a certified transcript of the record, to be prepared pursuant to the provisions of Equity Rule 75, be prepared and transmitted in due course to said Supreme Court of the United States.

Done and Ordered in open Court at Jacksonville, Florida, this 22nd day of July, A. D. 1914.

(Signed) RHYDON M. CALL,
District Judge.

Endorsed: United States District Court, Southern District of Florida. Manila Investment Company, et al., vs. Trustees of I. I. Fund, et al. Order allowing Appeal and Fixing Bond. Filed July 22, 1914. E. D. Dodge, Clerk.

114 In the District Court of the United States for the Southern District of Florida. In Chancery.

No. 168. R-45.

MANILA INVESTMENT COMPANY, a Corporation, and TACONY TRUST Company, Henry Disston, and E. F. Steck, as Trustees under the Last Will and Testament of Hamilton Disston, Deceased, Complainants,

VS.

PARK TRAMMELL et al., as Trustees, etc.; RICHARD J. BOLLES, et al., Defendants.

Appeal Bond.

Know all men by these presents, that we, Arthur F. Odlin, on behalf of the Complainants, above named, as principal, and L. L. Morgan, and J. G. King, as sureties, are hereby held and firmly bound unto Park Trammell, Thomas F. West, William V. Knott, W. A. McRae, and J. C. Luning, as Trustees of the Internal Improvement Fund of the State of Florida, Richard J. Bolles, William O'Brien, Florida Everglades Land Company, a corporation, P. A. Vans Agnew, J. M. Barrs, and Nathan P. Bryan, and Julia S. Bryan, his wife, defendants in the above entitled suit, in the full and just sum of Two Hundred and Fifty Dol-ars, for the payment of which, well and truly to be made, we do bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents.

Signed and sealed with our seals and dated this 24th day of July, A. D. 1914.

Whereas lately at a session of the said District Court of the United States for the Southern District of Florida the said Complainants have obtained from said Court an order in the above entitled and numbered suit allowing them an appeal to the Supreme Court of the United States from the final decree therein whereby their
115 bill of complaint was dismissed for want of jurisdiction.

Now, therefore, the condition of this obligation is such that, if the complainants aforesaid shall prosecute their said appeal to

effect, and shall answer for all costs that may be awarded against them, if they fail to make their plea good; then this obligation is to be void, else to remain in full force and virtue.

(Signed) ARTHUR F. ODLIN. [L. S.]
L. L. MORGAN. [L. S.]
J. S. KING. [L. S.]

Signed and sealed in presence of us:

(Signed) R. O. TURNER.
JNO. W. BURTON.

Approved:

(Signed) R. M. CALL, *Judge.*

STATE OF FLORIDA,
County of De Soto:

L. L. Morgan, being first duly sworn deposes and says that he is a citizen of said State and County; that he is the owner of real estate in said County of De Soto, of the value of Five Hundred Dollars, over and above all incumbrances and not subject to homestead exemptions or other exemptions allowed by law.

(Signed) L. L. MORGAN.

Sworn to and subscribed before me this 24th day of July, 1914.

R. O. TURNER,
Notary Public.

My commission will expire Apr. 10, 1916.

STATE OF FLORIDA,
County of De Soto:

J. G. King, being first duly sworn deposes and says that he is a citizen of said State and County; that he is worth the sum
116 of Five Hundred Dollars in unincumbered real estate in said County of De Soto, and the same is not subject to homestead exemptions.

(Signed) J. G. KING.

Sworn to and subscribed before me this 24th day of July, 1914.

[SEAL.] R. O. TURNER,
Notary Public.

My commission will expire April 10, 1916.

Endorsed: In the U. S. District Court, Southern District of Florida. In Chancery. Manila Investment Co., et als., vs. Park Trammell, et als. Appeal Bond. Filed July 27, 1914. E. D. Dodge, Clerk.

117 In the District Court of the United States for the Southern District of Florida. In Chancery.

No. 168. R-45.

MANILA INVESTMENT COMPANY et al.
vs.
PARK TRAMMELL et al., as Trustees, etc.; RICHARD J. BOLLES, et al.

To the Clerk of the Court aforesaid:

You are hereby directed, in preparing the transcript of record to be sent to the Supreme Court of the United States upon the appeal recently allowed to the complainants in the above entitled cause to incorporate therein the following portions of the record in said cause and to omit all others therefrom, unless the inclusion of other portions shall be directed by the appellees, or some of them, towit:

1. The "Amended and Supplemental Bill" as amended on the 30th day of June, 1914, with its Exhibits.
2. The Motion to Dismiss the same filed by defendant Board of Trustees of the Internal Improvement Fund of Florida.
3. The Motion to Dismiss the same filed by the defendants Bolles and the Florida Everglades Land Company.
4. The stipulation between counsel for complainants and for the defendant J. M. Barrs to abide by the ruling on said Motions.
5. The opinion and order of the Court sustaining said motions and dismissing complainants' bill of complaint.
6. The Petition of appeal, assignment of errors, order allowing appeal and appeal bond, with its approval by the Judge.
7. This præcipe and any like præcipe on behalf of any of the appelle-s, filed within ten days after the filing hereof, together
118 with any additional portions of the record indicated for inclusion by such præcipe or præcipes.

And oblige,
(Signed) ARTHUR F. ODLIN,
N. B. K. PETTINGILL,
Counsel for Complainants, Appellants.

Endorsed: U. S. District Court, Southern District of Florida. Manila Investment Company, et al. vs. Park Trammell, et al., Trustees, etc., et al. Appellants' Directions to Clerk for preparation of Transcript. Filed July 30, 1914. E. D. Dodge, Clerk.

119 In the District Court of the United States for the Southern District of Florida. In Chancery.

No. 168. R-45.

MANILA INVESTMENT COMPANY et al.
vs.
PARK TRAMMELL et al., as Trustees, etc., et al.

To *Messrs.* W. H. Ellis, Esqr., Counsel for Park Trammell et al., as Trustees of the Internal Improvement Fund of the State of Florida:

To E. J. L'Engle, Counsel for defendants R. J. Bolles, William O'Brien and Florida Everglades Land Company, and P. H. Odom, Esqr., Counsel for defendant, J. M. Barrs:

You and each of you are hereby notified that, pursuant to an appeal in the above entitled cause, taken and allowed to the Supreme Court of the United States on the 22nd day of July, 1914, we are about to file a præcipe indicating the portions of the record to be incorporated into the transcript on said appeal, a true copy of which is hereto attached as a part hereof; and that you are required to file your præcipe within ten days thereafter; should you desire additional portions of the record incorporated in said transcript, as provided in Rule 75 of the Rules of Practice in Equity.

(Signed) ARTHUR F. ODLIN,
N. B. K. PETTINGILL,
Counsel for Complainants.

120 We the undersigned, counsel of record for the respective defendants, hereunder designated, hereby severally acknowledge service of the foregoing notice and of a copy of the præcipe indicating the portions of the record desired by the complainants to be incorporated in the transcript, as referred to in said notice and as required by Equity Rule No. 75.

Dated: Jacksonville, Fla., July —, 1914.

(Signed) E. J. L'ENGLE,
Counsel for Defendants O'Brien and Fla. Everglades Land Co.

——, Fla., Aug. —, 1914.

W. H. ELLIS,
Counsel for Trustees of Internal Improvement Fund and R. J. Bolles.

Jacksonville, Fla., Q. 8th, 1914.

P. H. ODOM,
Counsel for Defendant Barrs.

Endorsed: U. S. District Court, Southern District of Florida. Manila Investment Company et al. vs. Park Trammell, et al., Trustees, etc., et al. Notice to Counsel with acceptance of Service. Filed August ,0, 1914. E. D. Dodge, Clerk.

121 In the United States District Court, Southern District of Florida. In Equity.

MANILA INVESTMENT COMPANY

vs.

PARK TRAMMELL et als., as Trustees of the Internal Improvement Fund of the State of Florida, et als.

Defendants' Directions to Clerk Regarding Transcript of Record on Appeal.

The Florida Everglades Land Company, Nathan P. Bryan, and wife, P. A. Vans Agnew, and William O'Brien, defendants in the above entitled cause direct the Clerk of said Court to include in the transcript of record on appeal herein the following papers and pleadings, in addition to those included in the directions of the complainants:

1. Original Bill of complaint, filed March 9, 1912.
2. Demurrer of the Florida Everglades Land Company, filed April 29, 1912.
3. Demurrer of the Trustees of the Internal Improvement Fund, filed May 2, 1912.
4. Demurrer of Nathan P. Bryan, and wife, filed May 6, 1912.
5. Demurrer of P. A. Vans Agnew, filed May 6, 1912.
6. Demurrer of J. M. Barrs, filed May 6, 1912.
7. Supplemental Bill of complaint filed March 3, 1913.
8. Motion to Dismiss Supplemental Bill, filed by the Florida Everglades Land Company, March 11, 1913.
9. Motion to dismiss supplemental bill filed by P. A.

122 Vans Agnew, March 11, 1913.

10. Motion to dismiss supplemental Bill filed by Nathan P. Bryan, and wife, March 11, 1913.
11. Answers of Richard J. Bolles, and Trustees of the Internal Improvement Fund, filed April 15, 1913.
12. Stipulation filed December 15, 1913.
13. Motion to dismiss supplemental and amended bill of complaint by William O'Brien, filed January 31, 1914.
14. Motion to dismiss supplemental and amended bill of complaint by P. A. Vans Agnew, filed January 31, 1914.
15. Motion to dismiss supplemental and amended bill of complaint by Nathan P. Bryan, and wife, filed January 31, 1914.

(Signed) E. J. L'ENGLE,

Solicitor and of Counsel for The Florida Everglades Land Co., Nathan P. Bryan and Wife, P. A. Vans Agnew, and William O'Brien.

STATE OF FLORIDA,
Duval County:

On this day personally appeared before me H. P. Osborne, who, being duly sworn deposes and says, That on the 10th day of August, 1914, he mailed a true and complete copy of the foregoing notice to N. B. K. Pettingill, Esquire, (Attorney at law) Tampa, Florida, and deposited the same in the United States Post Office at Jacksonville, Florida, in an envelope securely sealed and containing the requisite amount of United States Postage stamps, addressed as above.

(Signed) H. P. OSBORNE.

Sworn to and subscribed before me this 11th day of August, 1914.
[NOTARY'S SEAL.] P. D. GASKINS,
Notary Public.
My commission expires, March 5, 1917.

123 Endorsed: In the U. S. District Court, Southern District of Florida, In Equity. Manila Investment Company vs. Park Trammell, et als., as Trustees of the Internal Improvement Fund of the State of Florida, et als. Defendants' Directions to Clerk regarding transcript of record on Appeal. Filed August 11, 1914. E. D. Dodge, Clerk.

124 UNITED STATES OF AMERICA,
Southern District of Florida. ss:

I, Eugene D. Dodge, Clerk of the District Court of the United States for the Southern District of Florida, do hereby certify and return to the Supreme Court of the United States upon the appeal allowed to that Court on the 22nd day of July, A. D. 1914, in a cause pending in said District Court wherein Manila Investment Company, a corporation, and Tacony Trust Company, a corporation, and Henry Disston and E. F. Steck, the last three as Trustees under the last will and testament of Hamilton Disston, deceased, are complainants and appellants and Park Trammell, Thomas F. West, William V. Knott, W. A. McRae and J. C. Luning, as Trustees of the Internal Improvement Fund of the State of Florida, Richard J. Bolles, William O'Brien, P. A. Vans Agnew, J. M. Barrs, Nathan P. Bryan and Julia S. Bryan, his wife, and the Florida Everglades Land Company, a corporation, are defendants, that the above and foregoing pages, numbered from one to 123 inclusive, constitute and contain a true and correct transcript of the record of the final decree and a true and correct copy of all other papers, pleadings and proceedings in said cause, as the same appear on file and of record in my office, which have been directed to be included in the Transcript of Record herein by the written demands of the respective parties, together with a true copy of all such written demands; that I have compared the same with the originals; and that they are true and correct transcripts therefrom and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed

the seal of said Court, at Jacksonville in said District, this 16th day of September, in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States the one hundred and thirty-ninth.

[Seal District Court of the United States, Southern District of Florida.]

EUGENE D. DODGE,
Clerk United States District Court,
Southern District of Florida.

Endorsed on cover: File No. 24,371. S. Florida D. C. U. S. Term No. 627. The Manila Investment Company, The Tacony Trust Company et al., appellants, vs. Park Trammell et al., as trustees of the Internal Improvement Fund of the State of Florida et al. Filed September 19th, 1914. File No. 24,371.

In the Supreme Court of the United States, October Term, 1914.

#627.

MANILA INVESTMENT COMPANY, TACONY TRUST COMPANY, et al., Appellants,

vs.

PARK TRAMMELL and Others, as Trustees of the Internal Improvement Fund of the State of Florida, and Others, Appellees.

Stipulation for Amendment of Record.

The parties to the above entitled cause, by their solicitors and counsel, hereby stipulate and agree that the motion of The Florida Everglades Land Company to dismiss the amended and supplemental bill of complaint in said cause, which motion was filed in the District Court on January 31st, 1914, and which was omitted by the Clerk of said District Court from the transcript of record on appeal herein, forms a part of the record on appeal in said cause and was included in the written directions filed by the appellants in the District Court for the guidance of the Clerk in the preparation of said transcript of record; and, further, that a true and correct copy of said motion to dismiss said amended and supplemental bill of complaint is attached hereto and forms a part of this stipulation; and that said transcript of record should be amended by inserting said motion to dismiss said amended and supplemental bill of complaint; and that the Supreme Court of the United States be requested to enter an order amending said transcript of record by inserting therein said motion of said The Florida Everglades Land Company to dismiss said amended and supplemental bill of complaint, certified copy of which motion is attached hereto, and that all orders in the premises necessary to correct and amend said record by adding thereto said omitted motion to dismiss are hereby consented to.

ARTHUR F. ODLIN,
N. B. K. PETTINGILL,
Solicitors and of Counsel for Appellants.
E. J. L'ENGLE,
Solicitor and of Counsel for The Florida Everglades Land Co., N. P. Bryan and Wife, P. A. Vans Agnew, and William O'Brien.
T. F. WEST,
Solicitor and of Counsel for Trustees of the Internal Improvement Fund of Florida.
W. H. ELLIS,
By R. J. BOLLES,
Solicitor and of Counsel for R. J. Bolles.
P. H. ODOM,
Solicitor and of Counsel for J. M. Barrs.

In the United States District Court for the Southern District of Florida. In Chancery.

MANILA INVESTMENT COMPANY, a Corporation, and Others,
versus
PARK TRAMMELL and Others.

Motion to Dismiss.

Now comes Florida Everglades Land Company, a corporation, one of the defendants in the above entitled cause, and moves the Court to dismiss the amended and supplemental bill of complaint herein on the following grounds:

1. That the facts stated in the amended and supplemental bill of complaint herein are insufficient to constitute a valid cause of action in equity.

2. That it appears upon the face of said amended and supplemental bill of complaint that this Court has no jurisdiction of this cause.

3. That it appears upon the face of said amended and supplemental bill that the requisite diversity of citizenship to maintain the jurisdiction of this Court does not exist, and that the action is not one arising under the constitution or laws of the United States.

4. That it does not appear upon the face of said amended and supplemental bill that this action is one arising under the constitution or laws of the United States, but it does appear affirmatively that diversity of citizenship requisite to support the jurisdiction of this Court cannot be invoked without violating Section 24, of the Judicial Code of the United States, denying to this Court cognizance of any suit to recover the contents of a chose in action unless such suit might have been prosecuted in this Court to recover upon such cause of action even though such assignment had not been made.

5. That the complainants have not in and by their said amended and supplemental bill of complaint made or stated such a cause as does or ought to entitle them or any of them to any such relief or discovery as thereby sought or prayed from or against this defendant.

6. That said amended and supplemental bill is without equity.

7. That the complainants have not, as appears by their said amended and supplemental bill of complaint made our or stated any right or title to the relief thereby prayed.

(Signed) E. J. L'ENGLE,
Solicitors for said Defendants.

Endorsed: In the U. S. District Court for the Southern District of Florida, In Chancery. Manila Investment Co., et al., vs. Park Trammell, et al. Motion to dismiss. Filed January 31, 1914. E. D. Dodge, Clerk.

UNITED STATES OF AMERICA,
Southern District of Florida, ss:

I, Eugene D. Dodge, Clerk of the District Court, in and for the Southern District of Florida, do hereby certify that the foregoing is a true and correct copy of the original motion of the Florida Everglades Land Company to dismiss the amended and supplemental bill of complaint in the case of the Manila Investment Company, a corporation, et al., vs. Park Trammell, et al., which said original Motion is filed on the 31st day of January, 1914, and is now on the files in my office and a part of the records of this Court of which I am the legal custodian.

In witness whereof, I have hereunto set my hand and affixed the Seal of this Court, at Jacksonville, in said District, this 4th day of January, A. D. 1915.

[Seal District Court of the United States, Southern District of Florida.]

EUGENE D. DODGE, *Clerk.*

[Endorsed] 627/24371. In the Supreme Court of the United States, October Term, 1914. #627. Manila Investment Company, Tacony Trust Company, et al. vs. Park Trammell and others, as Trustees of the Internal Improvement Fund of the State of Florida, and others. Stipulation for Amendment of Record. E. J. L'Engle, Attorney and Counselor at Law, 209-212 Law Exchange, Jacksonville, Florida.

[Endorsed:] File No. 24,371. Supreme Court U. S., October term, 1914. Term No. 627. The Manila Investment Company et al., Appellants, vs. Park Trammell et al., etc. Stipulation of counsel and addition to record. Filed January 14, 1915.

FILED
APR 24 1915

In the Supreme Court of the United States

October Term 1914

No. 250

MAGNA INVESTMENT COMPANY,
Appellant,
vs.
PARK TRAFFORD AND OTHERS, AS TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA, AND OTHERS,
Appellees.

MOTION TO DISMISS APPEAL

In the Supreme Court of the United States

October Term 1914

No. 627

MANILA INVESTMENT COMPANY,
Appellant.

vs.

PARK TRAMMELL AND OTHERS, AS TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA, AND OTHERS,
Appellees.

MOTION TO DISMISS APPEAL

Now come the appellees in the above entitled cause and move the Court to dismiss the appeal herein upon the following grounds:

1. That neither the District Court nor the Supreme Court of the United States has any jurisdiction of the cause.

2. That there is no substantial question involved in said appeal of which the Supreme Court of the United States may take jurisdiction.

Solicitor and of Counsel for The Florida Everglades Land Co., N. P. Bryan and wife, P. A. Vans Agnew and Wm. O'Brien.

Attorney-General of Florida and Solicitor and of Counsel for Trustees Internal Improvement Fund.

Solicitor and of Counsel for J. M. Barrs.

Solicitor and of Counsel for R. J. Bellas.

FILED
APR 24 1915
JAMES D. MAHER
CLERK

In the Supreme Court of the United States

October Term 1914

No. 250

MANILA INVESTMENT COMPANY,
Appellant,
vs.
PARK TRAMMELL AND OTHERS, AS TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA, AND OTHERS,
Appellees.

NOTICE OF HEARING

THE ORDER PRESS, JACKSONVILLE, FLORIDA

In the Supreme Court of the United States

October Term 1914

No. 627

MANILA INVESTMENT COMPANY,
Appellant.

vs.

PARK TRAMMELL AND OTHERS, AS TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA, AND OTHERS,
Appellees.

NOTICE

The appellants and their solicitors will please take notice that on the 26th day of April, 1915, the appellees will submit to said Court, on printed brief and argument, a copy of which is served herewith, the motions of appellees to affirm and to dismiss the appeal in the above entitled cause in accordance with Rule 6 of said Court.

Solicitor and of Counsel for The Florida Everglades Land Co., N. P. Bryan and wife, P. A. Vans Agnew and Wm. O'Brien.

Attorney-General of Florida and Solicitor and of Counsel for Trustees Internal Improvement Fund.

Solicitor and of Counsel for J. M. Barrs.

Solicitor and of Counsel for R. J. Bolles.

STATE OF FLORIDA,
COUNTY OF DUVAL.

On this day personally appeared before me,

.....

who, being duly sworn, deposes and says: That on the .....day of....., 1915, deponent deposited in the United States Post Office at Jacksonville, Florida, a copy of the foregoing notice and of the motions to affirm and to dismiss mentioned and referred to in said notice, and of the printed brief or argument of the appellees in support of said motions, in an envelope or package duly addressed to the attorneys or solicitors for said appellants at their respective proper addresses, to-wit:

N. B. K. Pettingill, Esq., Tampa, Florida
A. F. Odlin, Esq., Arcadia, Florida,

duly postpaid; and that in due course of mail said envelope or package containing said papers should reach and be delivered to the addressees thereof as aforesaid not later than twenty-four hours after mailing at Jacksonville.

.....

Sworn to and subscribed before me this.....
day of....., 1915.

.....
Notary Public.

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In the Supreme Court of the United States

October Term 1914

THE MANILA INVESTMENT COMPANY, ET ALS.,
Appellants.
vs.
PARK TRAMMELL AND OTHERS, AS TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA, ET ALS.,
Appellees.

No. 627

BRIEF OF APPELLEES ON MOTIONS TO DISMISS AND TO AFFIRM

PRELIMINARY STATEMENT

The original bill of complaint in this cause was filed in the District Court of the United States for the Southern District of Florida on March 9, 1912. Subsequently, on December 16, 1913, after several amendments to the original bill, the amended and supplemental bill was filed which embraced and superseded all previous statements of the complainants' case. The defendants moved to dismiss the amended and supplemental bill for lack of jurisdiction. The motions were granted and the bill dismissed on July 1, 1914. The appeal is from the order of the District Court dismissing the bill for lack of jurisdiction. No other question was considered by the District Court. In this Court the appellees have moved to dismiss the appeal and also to affirm the decree under Rule 6.

BRIEF ABSTRACT OF THE CASE

The appellants' case, as set out in the amended and supplemental bill, briefly stated, is that they have succeeded by deed to the interest or estate of the St. Cloud Sugar Belt Railway Company in certain lands in the Everglades of Florida the legal title to which is held by the appellees.

The Railway Company claimed to be entitled to a land grant under the general acts for the incorporation of railroads, and also under a special act which purported to grant other lands to the St. Cloud Sugar Belt Railway Company. No lands being available to satisfy these grants according to their terms, the Atlantic & Gulf Coast Canal and Okeechobee Land Company, claiming prior rights of selection and grant in a large area specifically reserved for the satisfaction of its claims, requested the Trustees to satisfy the Railway Company's grant out of this reserve, which it is alleged that the Trustees agreed to do. The lands were not patented to the State until many years later, whereupon the Trustees conveyed a large part of the lands claimed by the Railway Company to the defendants or their predecessors in title. The Trustees have also declined to recognize the appellant's claims, and have adopted resolutions declaring them to be null and void. The title to a part of the lands in question is still vested in the Trustees. The appellants allege in their pleadings that the appellees hold the title to all of the lands in question in trust for the appellants, and pray the declaration and enforcement of the trust. On the other hand, the appellees maintain that the suit is substantially and in effect an action for specific performance, involving no questions of constitutional law. A synopsis of the allegations of the amended and supplemental bill will be found below.

The jurisdiction of the District Court to entertain the controversy was alleged to rest upon diverse citizenship and the impairment of the obligation of a contract and the denial of due process of law guaranteed by the Con-

stitution of the United States. At the hearing in the District Court, as recited in the decree, appellants abandoned their contention that jurisdiction existed by virtue of diverse citizenship, because their assignor, the Railway Company, was a citizen of the same state as the Trustees, the case on this point being controlled by the decision in Plant Investment Company vs. J. T. & K. W. Ry. Co., 152 U. S. 71. That this concession was necessary will appear by reference to the case just cited. The contention that jurisdiction existed by virtue of a violation of the contract clause of the Federal Constitution was also abandoned as appears by the recitals in the decree dismissing the bill. (Transcript page 65). The only constitutional question here relied on by the appellant is that the action of the Trustees in refusing to convey the lands to complainants and in conveying parts of the property to others deprived appellants of their property without due process of law. As we understand appellants' position, their claim of jurisdiction of this controversy by these Courts of the United States is based solely upon the denial of due process of law, the remaining federal question having also been abandoned at the hearing in the District Court.

SYNOPSIS OF AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT

The amended and supplemental bill (page 42, printed transcript) alleges that the Atlantic Gulf Coast Canal and Okeechobee Land Company (called herein the Land Company) entered into a contract with the Trustees of the Internal Improvement Fund of the State of Florida (called herein the Trustees) on September 1, 1888, whereby the Land Company agreed to perform certain drainage work on swamp and over-flowed lands belonging to the Trustees and described in the contract, in consideration for which the Trustees agreed to convey to the Land Company not exceeding four million acres at the rate of

twenty-five cents per acre. Dissatisfaction having arisen over the contract, the Legislature of Florida passed an Act approved February 16th, 1885, which was subsequently amended by an Act approved June 2nd, 1887, under which the Trustees were authorized and directed to settle their differences with the Land Company. Under these Acts the Trustees on August 1st, 1888, executed a so-called "Compromise Agreement" which superseded the preceding contract and reduced the area of the lands reserved for payment of drainage work. The new contract provided that the Land Company should select lands from the reserved area to an amount not exceeding two million acres, which selection was to be filed with the Trustees. The compromise agreement further provided that the Land Company was to expend the sum of $206,-264.00 on this work at the rate of not less than $40,000.00 per year, and upon the expenditure of each installment of $40,000.00 it was to become entitled to a conveyance of three-fifths of the lands thereby earned at the rate of twenty-five cents per acre. Upon complete performance of the contract the Land Company was to receive a conveyance for the rest of the lands. It is alleged that the acreage of land earned by the Land Company was 825,-056. It is further alleged that the compromise agreement was fully performed and complied with, and that such compliance was recognized by the Trustees at a meeting held January 10th, 1894. When the final accounts of the Land Company were approved it was declared entitled to a deed to 825,056 acres when the same were patented to the State of Florida by the United States out of the swamp and overflowed lands granted to the State under the Act of Congress of September 28th, 1850. The bill alleges that more than 59,136 acres of said lands had been earned by the Land Company under the compromise agreement prior to April 24th, 1891.

On February 19th, 1874, the Legislature of Florida passed a General Act for the incorporation of Railroads which was subsequently amended on March 12th, 1879. By these Acts the Legislature granted to any railroad

company incorporated under the General Acts in question the alternate sections of land within six miles of any such railroad which might be constructed under the specifications of the Trustees with the privilege of making up the deficiency, if any, from like alternate sections within twenty miles of the railroad. Thereafter the St. Cloud Sugar Belt Railway Company was incorporated under said Acts for the incorporation of railroads to construct a railroad from Kissimmee to Narcoossee in Osceola County, Florida, having a length of 15.4 miles. More than ten miles of this railroad were in operation before May 30th, 1889. By virtue of this fact the Railway Company became entitled to the land grants provided for under the Acts of February 19th, 1874 and March 12th, 1879.

On May 31st, 1889, the Legislature of Florida passed an Act entitled "An Act to Enlarge and Extend the Franchises of St. Cloud Sugar Belt Railway Company," being Chapter 3996, Laws of Florida, whereby the existing rights of the Railway Co. under previous laws were confirmed and extended, including the land grants thereby provided. The right or franchise of the Railway Company by such Act was merely enlarged so that the lands previously designated to it might be selected by it from any lands not otherwise appropriated. The entire 15.4 miles were completed and put in operation before June 12th, 1891, under the plans approved by the Trustees and pursuant to the Internal Improvement Act. On June 12th, 1891, the State Engineer approved the construction of the railroad, and the Trustees ordered a conveyance to be made to it upon its request of the alternate sections within the six or twenty mile limit pursuant to Acts of 1874 and 1879. Subsequently the Commissioner of Agriculture reported to the Trustees that no lands within the six mile limit were available, and on June 22nd, 1891, the Railway Company presented to the Trustees a communication from the Land Company which is quoted in the bill of complaint (page 46, printed transcript of record). The communication recites that in order to aid the Rail-

way by enabling it to obtain some lands under its franchise and to encourage the further extension of the Railway the Land Company is willing to and does release so much of the lands reserved under the drainage contract above mentioned in certain designated townships as the Trustees may convey to the Railway Company on account of lands that may be due by it on account of the railroad now constructed. The Trustees then passed a resolution (page 47, printed transcript) reciting that the Railway Company was entitled to 3840 acres of swamp and overflowed lands for every mile of road from the alternate sections within six miles not otherwise appropriated, and as the Commissioner of Agriculture has reported that there are no such lands within six miles, and as the Land Company has filed with the Trustees written authority to convey to the Railway Company lands reserved under the drainage contract in said designated townships, therefore it was resolved that the Trustees would under the authority aforesaid convey to the Railway Company "the quantity of lands to which it is now entitled to be taken from odd numbered sections in the townships aforesaid," when the lands should be patented.

By this resolution the Trustees contracted with the Railway Company to substitute it for the Land Company as grantee and cestui que trust of the lands earned by and agreed to be conveyed to the Land Company to the extent of 59,136 acres, that being the acreage recognized thereby as due the Railway Company for its 15.4 miles at 3840 acres per mile, and to hold in trust for and convey said lands to the Railway Company when patented. By virtue thereof the Land Company became divested of the equitable ownership of said 59,136 acres vested in it under said contract, and the Railway Company became the equitable owner of said acreage instead of the Land Company, to be taken from the odd numbered sections in the six townships so designated. The Railway Company thereby acquired the vested right to a proper deed when said lands were patented. All of said six town-

ships were then in Dade County and now in Palm Beach County and within the Southern District of Florida. That as said 59,136 acres were included in said 825,056 acres reserved for and earned by the Land Company, said resolution of said Trustees merely changed the beneficial owner thereof, and neither increased nor diminished the obligations of the State, but merely made the railway instead of the Land Company the cestui que trust of 59,136 acres, and reduced by the same amount the 825,056 acres held in reserve. That all of said odd numbered sections are included in the patent from the United States to the State dated April 29th, 1903. That complainants did not know that said patent was issued until shortly before the institution of this suit, as said patent was not recorded in the land records of Dade or Palm Beach Counties.

Within nine months after the contract between the Trustees and the Railway Company above set forth, the Railway Company selected the 59,136 acres out of a larger quantity in said six townships, and thereupon conveyed to Hamilton Disston a one-half undivided interest therein, and conveyed the other half interest to John J. Dunne, who, with his wife, conveyed the same to Manila Investment Company. The Disston half interest passed to the Tacony Trust Co., Henry Disston and Henry Steck, as Trustees and Executors of Hamilton Disston. All of said deeds were recorded before the Trustees transferred any of said lands, and contained recitals referring to the resolution of the Trustees mentioned above.

Complainants allege that since 1894 they have been and are now the owners of said 59,136 acres and entitled to receive a proper deed to the same since they were patented. Demand was made on the Trustees for such deed by the complainants and the Railway Company, but the Trustees declined and refused to comply with said resolutions and actions of the Trustees, basing their refusal upon the unconstitutionality of the Act of May 31, 1889, and their resolution of November 22, 1904, annulling and declaring void any Act of said Board authorizing any conveyance of lands for the benefit of the Land Company

subsequent to 1896. Such denial and refusal by the Trustees to execute their trusts by conveying to complainants the legal title to said lands violates the rights secured to complainants by the United States constitution. Such refusal of the Trustees in connection with the transfers of said lands to other parties is an attempt to violate the obligation of the contract entered into by said Board with the Railway Company by its resolution of June 22, 1891, contrary to the provisions of Section 10, Article 1, of the Constitution of the United States, and is also an attempt to deprive complainants of their property without due process of law, contrary to the 14th amendment.

On December 24, 1908, the Trustees made a contract with defendant R. J. Bolles for the sale and drainage of lands, and on the next day deeded to Bolles over a half million acres of land, including 43 sections of the land belonging to complainants, and Bolles gave a purchase money mortgage. Bolles conveyed one section to Andrus. In December, 1908, the Trustees executed a deed to defendant P. A. Vans Agnew conveying ten sections of said lands really owned by complainants. Vans Agnew conveyed to Bryan a half interest, and the two conveyed to Barrs, who conveyed to The Florida Everglades Land Company.

The total area of all lands so reserved in 1891 for the benefit of the Railway Company, being the aggregate of the odd numbered sections in said six townships, is 65,594 acres. Out of said 65,594 acres, the legal title to 32,386 acres is still in the Trustees. Complainants are the equitable owners of said 32,386 acres, to obtain deed for which is one of the purposes of this suit. Deducting 32,386 acres from 65,594 acres in said six townships, leaves 33,208 acres which the Trustees have conveyed as follows to Vans Agnew and thence to The Florida Everglades Land Co. lands aggregating 5688 acres, and to R. J. Bolles lands aggregating 26,880 acres, and to defendant Andrus lands aggregating 640 acres.

After the complainants shall receive deeds to the lands in Schedule "T," legal title to which is in the Trustees, aggregating 32,386 acres, there still remain 26,570 acres in said six townships conveyance of which should be made to complainants to give them the legal title to lands which they are entitled to receive, they being already the equitable owners. That said 26,570 acres must be taken from the 33,208 acres in Schedule "I," making the percentage of lands in Schedule "I" to which complainants are entitled to receive the legal title 80 and 5533-10000 per cent. Therefore complainants are entitled to receive from the Florida Everglades Land Company 4581.80 acres out of 5688 acres; from Bolles 21,652.70 acres out of 26,680 acres; and from Andrus 515.50 acres out of 640 acres, making a total of 26,750 acres, which, added to the 32,386 acres in Schedule "T," aggregates 59,136 acres.

All of the defendants had full notice of the equities of complainants, both from the records of Dade and Palm Beach Counties and those of the Trustees. Such knowledge existed, long before any claim for any of said lands was made by any of the defendants. By reason thereof the Trustees of the I. I. Fund are trustees of the legal title to the lands in Schedule "T" and the other defendants are trustees of the legal title to the lands in Schedule "I" for complainants, to the extent of 4581.80 acres of The Florida Everglades Land Co., 21,652.70 acres of lands of defendant Bolles, and 515.50 acres of lands of J. E. Andrus. If the parties cannot agree on the selection of the two last mentioned pro rata quantities or percentages, complainants pray that a Master be appointed to make such selection.

The bill prays (1) that Trustees be decreed to hold as Trustees of a naked trust for complainants said lands in Schedule "T," and be directed to make, execute and deliver to the complainants a deed thereof. (2) The same relief as to the 4581.80 acres from The Florida Everglades Land Company after same shall have been selected as above prayed. (3) Same relief as to Bolles and O'Brien

as to the 21,652.70 acres in Schedule "I" when selected as aforesaid. (4) Same relief as to Andrus. (5) The mortgage from Bolles to the Trustees be declared void and cancelled. (6) That the Court decree that when said deeds were made by the Trustees to the respective grantees aforesaid the same were subject to the rights and equities of the parties from whom orators claim. (7) In the alternative, that if the Court shall decline to apply the percentage rule invoked by complainants, then that it apply the rule of inverse order of alienation or such other rule as may do justice and equity, and complainants submit their rights to the Court and offer to accept any ruling which will give them the legal title to the lands they claim under Schedules "T" and "I." (8) And for other relief.

MOTIONS TO AFFIRM AND TO DISMISS

The appellees have moved this Court to affirm the decree upon the ground that the questions upon which the jurisdiction depends are so frivolous as not to need further argument. They have also filed a separate motion to dismiss the appeal, upon the ground that neither the District nor the Supreme Court of the United States has any jurisdiction of the cause, and that no substantial question is involved in the appeal of which the Supreme Court may take jurisdiction. (See Rule 6 of the Supreme Court).

ARGUMENT

I

JURISDICTION DOES NOT EXIST UPON THE GROUND OF THE DENIAL OF DUE PROCESS OF LAW

The appellants contend that the action of the Trustees in refusing to convey the lands to the appellants deprives them of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment. It is submitted, however, that there is no showing in the amended and supplemental bill of complaint of a violation of either provision of the Constitution.

In considering this feature of the case it must be borne in mind that it is necessary that the bill should clearly state and show that a federal question is actually involved. The mere suggestion that such a question is involved or likely to be involved is not sufficient. The bill must state in positive language facts showing the manner and connection in which the federal question has arisen.

Western Union vs. Ann. A. Ry., 178 U. S. 239.
Gold Washing Co. vs. Keyes, 96 U. S. 199.
Blackburn vs. Portland Co., 175 U. S. 571.
Lampasas vs. Bell, 180 U. S. 276.
Press P. Co. vs. Monroe, 164 U. S. 105.
Hanford vs. Davies, 163 U. S. 273.
McCain vs. Des Moines, 174 U. S. 168.
Oregon Short Line & U. N. R. Co. vs. Skottowe, 162 U. S. 490.
Fla. Central and P. R. Co. vs. Bell, 176 U. S. 321; 4 Enc. U. S. Sup. Ct. 992, Note 25.

The facts must clearly show the nature of the suit, and it must plainly appear that the action arises under the constitution, laws or treaties of the United States. There must be a real and substantial dispute as to the

effect or construction of the constitution or of some treaty of the United States upon which the determination of the case depends.

McCain vs. Des Moines, 174 U. S. 168.
Shreveport vs. Cole, 129 U. S. 36.
New Orleans vs. Benjamin, 153 U. S. 411.

The mere averment that a question exists under the constitution of the United States is not sufficient to give jurisdiction, where the question is so wanting in merits as to be frivolous or without any support whatever.

Farrell vs. O'Brien, 199 U. S. 89.

The amended and supplemental bill of complaint has alleged that the appellants are entitled to have conveyed to them by the Trustees of the Internal Improvement Fund of Florida certain lands which their assignor had earned under a legislative railway land grant, or possibly by transfer and assignment from a contractor who had earned lands in payment of drainage work. The Trustees refused to make the conveyance to the appellants, and this refusal constitutes the gravamen of the case. It is contended that the refusal of the Trustees to recognize or fulfil the supposed obligation is a denial of due process of law, and this was the sole basis for the claim of jurisdiction at the hearing in the District Court. The appellees submit, however, that a very slight consideration of the case will result in the conclusion that due process of law has not been denied the appellants. To sustain the jurisdiction of the Court upon this aspect of the case, it must be manifest that the decision of the issues necessarily involves a determination of the constitutional question presented. The mere reference to the constitution or a simple assertion by the appellants that they have constitutional rights which have been invaded is not sufficient to raise a federal question. A fair examination of the nature of the cause of action in the present con-

troversy will disclose the fact that the issues do not embrace either necessarily or indirectly a determination of a federal question.

If the appellants have been denied due process of law it must be the result of some act of the Trustees of the Internal Improvement Fund. The remaining appellees have done or omitted nothing which by any construction could be regarded as violating the appellants' constitutional rights. Their place in this controversy is merely that of purchasers of lands from the Trustees. The fairness or good faith of their transactions with the Trustees is not impugned, except that it is contended that they had notice of appellants alleged equities from the minutes of the Trustees, and the records of the counties in which the lands lie. This is substantially the only connection of these appellees with the subject matter of the litigation, and it is obvious that they have not impaired or denied any of the rights of the appellants under the constitution.

It is therefore clear that the federal question attempted to be raised by the record must be tested solely by the conduct of the Trustees of the Internal Improvement Fund. Stated in its simplest form, the charge against the Trustees is that they have repudiated and refused to perform an executory contract for the conveyance of lands, and have conveyed a part of the lands to other persons. It is not apparent how such conduct can constitute the denial of due process of law. It may be admitted that the Trustees are officers of the State, and that they are merely ministerial agents of the State in the management, control and disposition of public lands constituting the Internal Improvement Fund. We might go further and admit that the appellants have a valid executory contract for the conveyance or purchase of the lands embraced in this suit (although, in fact, the validity of the contract is strongly disputed), and that the consideration for the lands has been paid in full; yet it would not by any means follow that the breach of the contract by the Trustees would result in the denial of due process of law within the meaning of the Fourteenth

Amendment. The cause of action stated in this record differs in no essential particular from a controversy between private individuals exclusively. The fact that the contract was made by the State of Florida or its ministerial officers does not change the nature of the case. The title was vested in the Trustees who can be and have been sued on the contract, as they have been in many other cases in the State and Federal Courts for more than fifty years. The ordinary rights and remedies of parties to contracts exist in this case, and it is significant and worthy of comment that the amended and supplemental bill alleges no reason why any court having jurisdiction of the parties and subject matter cannot adjudicate the validity of the contract or grant set up in the bill and afford the complainants such relief as they may be entitled to. This being true, the appellants have not been denied due process of law, because their rights may be inquired into, determined and enforced in like manner as those of the parties to any other contract.

But the burden of appellants' contention seems to be that, because they have alleged complete performance of their contract or of the conditions of their grant, the equitable title has become vested in them, and the act of the Trustees in conveying to the other defendants a part of the lands has resulted in depriving them of their property without due process of law. If this were a correct statement of law, which is not conceded, it is based upon what we believe to be a state of facts not sustained by the record. On the contrary, it is manifest that neither the equitable nor the legal title to the property in controversy has ever passed to the appellants or their predecessors in interest. The acts of the legislature under which appellants claim did not designate or specify, or, as applied to the facts of this case, afford any means for ascertaining, the particular lands to which the grant should attach. The grant in the general incorporation acts of 1874 and 1879 were of lands in place; that is, the alternate sections within the six or twenty mile limit not otherwise appropriated. It is conceded in the bill of

complaint that no lands of this class existed, and that therefore none could pass under the acts referred to. The special act of 1889 granting to the Railway Company 3480 acres per mile (if it were constitutional) left to the discretion of the Trustees the selection and location of the lands out of which the grant was to be satisfied. The Railway Company had no statutory or other right to demand in satisfaction of its special grant any specific lands, or in any other respect to control the administrative discretion of the Trustees in setting apart lands to the extent of the acreage granted. This was the condition of the case when the Railway Company applied to the Trustees in 1891 to locate its claim within the drainage reserve of the Land Company. The resolutions of the Trustees (transcript page 47) recited that there had been reserved by the Land Company under its drainage contract the lands in six townships. The odd numbered sections in these townships amounted to 65,594 acres. (Transcript, page 51). The total acreage of lands claimed by the Railway Company was 59,136. (Transcript, page 53). Therefore, the territory or area of lands out of which the claim of the Railway Company was to be satisfied considerably exceeded the Railway Company's claim. The resolutions of the Trustees provided that they would convey to the Railway Company "the quantity of lands to which it is now entitled, to be taken from the odd numbered sections in the townships aforesaid, as soon as patents are obtained from the United States for the States selection in said townships." But the Trustees did not set apart any specifically described lands which they agreed to convey to the Railway Company. They merely undertook by their resolution to designate a limited territory out of which they would subsequently select the lands which they would convey to the Railway Company to satisfy its grant. The effect of the resolution was to restrict to the odd numbered sections in six townships the selection of the Railway Company's lands instead of making that selection from any of the lands of the Trustees in the State. The range of selection was limited and

restricted in part, but the act of selection was not performed or consummated. The resolutions of the Trustees amounted to nothing so far as the complete exercise of their administrative discretion was concerned, and they reserved the right, which they still possess (conceding the existence of a cause of action), to select and segregate the lands which they considered proper to convey in satisfaction of the Railway Company's grant.

These conditions and facts cannot be contested. It results from them that the title to the lands involved in this suit has never passed to the appellants or their predecessors. Further, it would be impossible for the title to pass to the appellants unless and until the Trustees shall have exercised their administrative discretion and set apart and described the lands which will pass in satisfaction of the grant.

Even if it be true that appellants or their predecessors have completely performed the contract on their part or satisfied all of the conditions of the grant, it cannot be successfully contended that the legal title to any lands has ever passed to the appellants or that they are entitled to be regarded in equity as the owners of any specific property. If all of the appellants' contentions are admitted, they are entitled to damages for a breach of an executory contract and nothing more. Specific performance would not lie in this case, because the subject-matter of the contract or grant is too indefinite. Neither would mandamus lie, except possibly to require the Trustees to exercise their discretion in selecting the lands.

From every point of view, therefore, the conclusion must be reached that the appellants have no vested interest in any specific lands, but their rights, whatever they may be, are merely those which follow from the breach of an alleged executory contract. For the same reasons the Trustees are not the holders of the lands in controversy in trust for the appellants. There is nothing which could be identified with any certainty as the subject-matter of the trust. No express declaration of trust exists. No implied trust can arise, because even if the

contract or grant alleged is valid and all of the conditions and terms have been performed, the subject-matter of the transaction is fatally indefinite and cannot be made certain without the exercise of the administrative discretion of the Trustees, which cannot be judicially controlled and directed.

As was said by the Supreme Court of Florida in Lines vs. Darden, 5 Fla. 51, 72:

> "To constitute a valid trust three circumstances must concur: Sufficient words to raise it, a definite subject and a certain and ascertained object."

It is elementary that there must be some definite and certain subject-matter of the trust. The property which is to be the basis of the trust must be definitely and positively identified and described.

> "An existing property right in or to some distinct subject matter is essential to the existence of every trust, and any instrument, however perfect otherwise, which fails to disclose this, cannot properly be established as a declaration of a trust."
>
> Roth vs. Michalis, (Ill.) 17 N. E. 809-810.

> "When by will a future estate bequeathed is expressed by such words as 'so much as shall remain undisposed of or unspent,' the subject of the legacy is not sufficiently certain to create a trust in the first taker."
>
> Mills vs. Newberry, et al, (Ill.) 1 N. E. 156.

Where a husband told his wife that he wanted her to have all his property, not mentioning any specific property—no trust was created as the subject-matter of the trust was not sufficiently identified.

McCandless vs. McCandless, Admrs. (Ky.) 111 S. W. 302.

Seabrook vs. Grimes (Md.) 68 Atl. 883.

Renz vs. Stoll, (Mich.) 54 N. W. 276.

Smullin vs. Whorton, (Neb.) 103 N. W. 288.

Taft vs. Dimond, (R. I.) 18 Atl. 183.

Mills vs. Newberry, (Ill.) 112 Ill. 123.

Tested by these well established principles, there is nothing in the record to show that the subject-matter of the supposed trust has ever been ascertained or is possible of ascertainment. It is anomalous that there should be a trust, and yet the alleged beneficiary of the trust should not be able to point out to the Court the trust property. That such is the case here is evident from the prayers of the amended and supplemental bill.

The same principles preclude the specific performance of the alleged contract, because it has been often decided that where the description of land is vague or indefinite, or where it is described by quantity without definite location, a decree of specific performance will not be rendered. Thus in Patrick vs. Sears, 19 Fla. 856, it was held that specific performance will not be decreed where the land is described as "five acres near Kissimmee City to be selected by his (vendee's) agent." An agreement to sell "forty acres of land" will not be specifically enforced. (Thompson vs. Gordon 72 Ala. 455); nor where the land is described as "one-third interest in five acres located near said works." (Hamilton vs. Harvey, 13 N. E. 210). An agreement to convey "one hundred and twenty acres of land in Shannon County, Missouri," is fatally defective. (Miller vs. Campbell, 52 Ind. 125). The same is held of an agreement to convey "five acres in Lot 3, Section 23," etc. (Nippolt vs. Kammon, 40 N. W. 266). Contracts to convey "one hundred acres" (Breaid vs. Munger, 88 N. C. 297); or "a piece of land supposed to be forty acres" (Jones vs. Carver, 59 Tex. 293); or a resolution of a Board of Directors that "two acres be sold" (Carr vs. Passaic Land Co., 27 N. J. Eq. 85) have all been held to be invalid and unenforcible. See also:

Island Coal Co. vs. Streitlemier, 37 N. E. 340.
Lynes vs. Hayden, 119 Mass. 482.
Crockett vs. Green, 3 Del. Ch. 466.
Wiergert vs. Franck, 56 Mich. 200.
Appeal of Holthause, (Pa.) 12 Atl. 340.
Westfall vs. Cottrills, 24 W. Va. 763.
Blankenship vs. Spencer, (W. Va.) 7 S. E. 433.

Barnett vs. Nichols, 56 Miss. 622.
Rampke vs. Buehler (Ill.) 67 N. E. 796.
Auer vs. Matthews (Wis.) 108 N. W. 45.
Knight vs. Alexander, 71 Pac. 657.
Pierson vs. Ballard, (Minn.) 20 N. W. 193.
Omaha Loan & Trust Co. vs. Goodman, (Neb.) 86 N. W. 1082.

It is clear that a mistake of judgment, error or fact or even intentional misconduct on the part of a public officer does not come within this provision of the constitution. The repudiation by a public officer of a contract or grant, even if based upon the unconstitutionality of a statute as the bill alleges, is not a denial of due process of law within the purview of the constitution. All the rights of the appellants which have existed still exist, and can be enforced in any Court of competent jurisdiction. The refusal of the Trustees to comply with their legal obligations, if any, does not prevent them from being sued thereon; and there is no reason why their contracts or legal duties cannot be enforced in like manner and to the same extent as those of individuals. No facts have been alleged in the bill why an ample remedy is not afforded by an appropriate suit in any Court of competent jurisdiction to protect and enforce whatever rights the appellants have on the facts stated.

On this branch of the argument the appellants' case is concluded by the decisions of this Court:

St. Paul Gas Light Co. vs. St. Paul, 181 U. S. 142.
Dawson vs. Columbia Ave. Etc. Co., 197 U. S. 178.

In the case of St. Paul Gas Light Co. vs. St. Paul, 181 U. S. 142, the appellant had entered into a contract with the City of St. Paul to light its streets. The corporation carried out its contract until the City changed its lighting system. The City denied its obligation to continue the payments required by the contract. As a result of the disagreement, the City adopted an ordinance requiring the Gas Light Co. to remove its lamps and directing

the discontinuance of further payments to the Gas Light Co. under its contract. It was contended that the action of the City, including the adoption of the ordinance in question, was an impairment of the obligation of the contract within the constitutional meaning of that phrase and a denial of due process of law. The Court remarked:

> "A large number of cases were cited in the argument at bar under the assumption that they sustained the proposition that wherever a mere denial of contract liability is made by a municipality such a denial is an impairment of the obligations of the contract, since it is a refusal to comply with the contract and hence it is a disregard of the obligations which the contract created. We do not stop to refer to all these cases thus relied upon, because we think it results from the statement of the proposition that it is without foundation."

In Dawson vs. Columbia Ave. Etc. Co., supra, it was held that a formal repudiation by the municipality of its contract with a Water Works Company, and its refusal to perform its obligation under such contract could not give rise to a suit under the federal constitution of which a federal court could take jurisdiction without reference to the citizenship of the parties. The Court said:

> "We are of the opinion that the bill should have been dismissed for want of jurisdiction. * * * * * * * The attempt by an afterthought to give jurisdiction by setting up constitutional rights must fail also. The bill presents a naked case of breach of contract. The first step of the City was to repudiate the contract and to refuse to pay. Whatever it may have done subsequently, its wrong, if contrary to the decision of the Supreme Court of the State, there was a wrong, was complete then. The repudiation and refusal were kept up until the bill was filed, and the other acts were subsequent, subordinate to and in aid of them. The mere fact that the City was a municipal corporation does not give to its refusal

the character of a law impairing the obligation of a contract or deprive a citizen of property without due process of law. That point was decided in St. Paul Gas Light Co. vs. St. Paul, 181 U. S. 142. * * * In the case before us there was no legislation subsequent to the contract, and it is not even shown that there is color of previous legislation for the City's acts. Those acts are alleged to be unlawful, and the allegation would be maintained by saying that they were not warranted by the laws of the State. * * * We repeat that something more than a mere refusal of a municipal corporation to perform its contract is necessary to make a law impairing the obligations of a contract or otherwise to give rise to a suit under the constitution of the United States."

The cases last cited are decisive of the point under discussion. The Trustees of the Internal Improvement Fund of Florida occupy no different situation than the municipalities who were parties to the cases cited. What has been alleged in the amended and supplemental bill is that the Trustees have refused to recognize the validity and carry out the terms of an alleged executory contract relied upon by the appellants. As a result the appellants have not been able to secure a deed of conveyance to the lands in controversy. This is a brief but complete statement of the nature of the present litigation. Nothing involved in this state of facts raises a constitutional question. The appellants either have an enforcible contract or trust or they have no cause of action whatever.

It follows from the foregoing discussion that the property of the complainants has not been taken from them without due process of law. They have nothing at issue, except a chose in action or the right to sue for the breach of an alleged contract.

The cases upon which the appellants rely to sustain their contention that they have been denied due process of law are clearly distinguishable from the case at bar by reason of this important and fundamental distinction. The appellees do not question that it has been held by this

Court that one officer of the United States Land Office is not competent to cancel the completed act of his predecessor in office whereby a title has passed, because that result requires the judgment of the Court. Such cases as Noble vs. Union River Logging Co., 147 U. S. 165; Moore vs. Robbins, 96 U. S. 530; U. S. vs. Schurtz, 102 U. S. 378, which establish the proposition above referred to, are not in point in respect to this controversy, because (if for no other reason) the legal title has never passed from the Trustees to the appellants or their predecessors, nor have the appellants ever become vested with a clear legal or equitable title to any specific lands whatever. In the case of Noble vs. Union River Logging Company the legal title to the lands had passed, and the Secretary of the Interior therefore had no right (so this Court held) to repudiate the acts of his predecessor or to attempt to divest the title of the Railroad. All authority or control of the Executive Department over lands, the title to which had been conveyed, terminated and "the functions of that Department necessarily ceased when the title had passed from the Government." Hence the Court held that "no officer of the Land Office is competent to cancel or annul the act of a predecessor in office." "That is a judicial act and requires the judgment of the Court." On the other hand, the present controversy does not involve a case where the authority or control of the Executive Department over the lands has terminated; because the title could not in any event pass from the Trustees until they had exercised their administrative discretion and selected the lands to which the grant or contract should apply. The functions of the Trustees had not ceased, because the title had not passed either legally or equitably; and the transaction could in no event be brought to a conclusion or the appellants' rights vested in any particular property until further authority and control of the Trustees had been exercised. No Court could control this discretion, and the judgment of a Court could not divest the Trustees of the title. The distinction here drawn is emphasized by the case of Beley vs. Napthaly,

169 U. S. 353-365. It cannot be said therefore that the case of Noble vs. Union River Logging Co. or other similar cases of like effect support the contention that the Trustees have denied due process of law to the complainants, because (to repeat) *First:* the title to the lands has never been vested in the complainants, as no lands have been described or identified which can be the subject of either a legal or equitable title; *Second:* Due process of law exists in respect to this controversy in an appropriate action at law or in equity in any Court of competent jurisdiction to enforce whatever rights appellants may have under their alleged contract or grant; and *Third:* the jurisdiction in the Noble case was based solely upon the fact that the claim arose under the laws of the United States, and the Court never decided that, irrespective of that feature of the case, a federal question would have been presented.

The arguments that the action of the Trustees has impaired the obligation of a contract and have denied due process of law are closely related. Similar contentions were presented in the cases of St. Paul Gas Light Co. vs. St. Paul, 181 U. S., 142, and Dawson vs. Columbia Avenue, Etc. Co., 197 U. S., 178, which have already been discussed above. Both of the cases referred to are also authority against the contention that the Trustees have denied the complainants due process of law. Not only are the facts similar and the decision contrary to the contentions of the complainants; but in the Dawson case it was expressly held that the repudiation of a contract under a municipal ordinance did not give rise to a suit under the Federal Constitution. This means that such action was not a denial of due process of law; but in the present case there has been no legislation which destroyed the complainants rights and no other act has occurred to affect complainants injuriously, except the refusal of an administrative board to carry out an executory contract which that Board has regarded as invalid. The Trustees may be wrong in their construction of the contract or their view of the law, or their position may be arbitrary

and without foundation. For like reasons they might refuse to pay a just debt or breach a valid contract. In neither of the supposed cases, however, would it result that the Trustees had denied the injured party due process of law; and we submit that the present case is in no essential or material respect distinguishable from any other mistake or illegal act on the part of the Trustees.

The mere fact that the injury complained of was in violation of the state laws or constitution is not of itself sufficient to raise a federal question. A different view would give to the Fourteenth Amendment a very much wider scope than was contemplated at the time of its adoption. This statement is a paraphrase of the language of this Court in the case of Owensboro Waterworks Co. vs. Owensboro, 200 U. S. 38, 47, where it was said:

> "Many acts done by an agency of a state may be illegal in their character when tested by the laws of the state, and may, on that ground, be assailed, and yet they cannot, for that reason alone, be impeached as being inconsistent with the due process of law enjoined upon the states. The 14th Amendment was not intended to bring within Federal control everything done by the state or by its instrumentalities that is simply illegal under the state laws, but only such acts by the states or their instrumentalities as are violative of rights secured by the Constitution of the United States. A different view would give to the 14th Amendment a far wider scope than was contemplated at the time of its adoption, or than would be consonant with the authority of the several states to regulate and administer the rights of their peoples in conformity with their own laws, subject always, but only, to the supreme law of the land."

The quoted language is pointedly applicable here. The Trustees might have broken their contract, and all of the contentions of the complainants in their amended and supplemental bill might be conceded, but it would still result, as in the Owensboro case, that these facts do

not raise a federal question. The mere violation of law by a State agency is not a denial of due process of law.

Barney vs. City of New York, 193, U. S. 430.
Virginia vs. Rives, 100 U. S. 313.
Civil Rights cases, 109 U. S. 3.
Missouri vs. Dockery, 191 U. S. 165.

"When a subordinate officer of a state undertakes, in violation of the State law, to do that which is unauthorized and forbidden by the State law, such action cannot be said to be a State action within the meaning of the Fourteenth Amendment. In such cases the grievance is simply that the State law has been broken and not that the State has inflicted a wrong through its legislative, executive or judicial department."

5 U. S. Ency. 545, notes 4 and 5.
Virginia vs. Rives, 100 U. S. 313.

The decisions of the Supreme Court of the United States have established too firmly for question that the rulings of the administrative and executive departments of the State or Federal Government are not subject to judicial review, if within the limits of their discretion. And, further, that the action of such a department, even if it results in the loss of property or the injury of individuals, does not ordinarily constitute the denial of due process of law.

Public Clearing House vs. Coyne, 194 U. S. 497.
Bates & Guild Co. vs. Payne, 194 U. S. 106.
Beley vs. Napthaly, 169 U. S. 353.

Many cases could be cited to the same effect, but it is especially true that the discretion of the heads of the land departments of the State or Federal Government involving questions of administrative discretion are accepted as final by the Courts, and do not constitute a basis for the claim of the denial of due process of law. This case presents a state of facts in which the discretion of the Trustees has been called into account, and no decree

could be rendered in this suit, without either usurping the functions of the Trustees in respect to the selection and location of the lands or attempting to control and direct the exercise of that discretion. It is not a judicial act to do either of these things, and the existence of such an obstacle to a judicial decree is a sufficient answer to the prayers of the amended and supplemental bill of complaint.

II

THE CONTRACT OR GRANT RELIED UPON BY APPELLANTS IS NOT VALID OR ENFORCIBLE AND WILL NOT SUSTAIN THE CONTENTION THAT THE ACTION OF THE APPELLEES IS A DENIAL OF DUE PROCESS OF LAW

There never was a valid contract between the State or the Trustees and the appellants' predecessors in title. The powers of the Trustees are statutory and extend no further than the language of the Acts of the Legislature and all reasonable intendments therefrom. The supposed contract upon which the present cause of action is based was not within the power of the Trustees, and hence it was never valid nor enforcible. For this reason there was no contract which could have been impaired. A consideration of the facts alleged makes this clear.

The Railway Company's statutory land grant was based upon the General Railroad Incorporation Acts of 1874 and 1879, which granted to the Railway Company the alternate sections of lands within the six and twenty mile limits. (See excerpts from these acts in the appendix). The acts of 1874 and 1879 did not grant any specifically described lands. They gave the Railway Company the right to receive the alternate sections within the limit stated, if not otherwise disposed of before the

railroad was constructed, but whether the odd or even numbered sections were to be conveyed rested with the Trustees. The right of selection was not given to the Railway Company. The nature of the grant under these acts is immaterial, however, because it is conceded that no lands remained within the statutory limit out of which the grant could be satisfied. The Trustees had no power to donate public lands. They could only execute and give effect to a statutory land grant. In this situation the appellants must look to some other source of title than the Railroad Incorporation Acts of 1874 and 1879, in order to sustain their grant. Meeting this objection, they contend that the special act of 1889 "To Enlarge and Extend the Franchises of the St. Cloud Sugar Belt Railway Company" granted to the Railway Company 3840 acres of land per mile of constructed railroad to be taken from the alternate sections within six miles of the line of railway, and that any deficiency within the limit stated should be made up or supplied from any lands owned by the State not appropriated to other existing corporations. It was provided, however, that the State of Florida or the Trustees "shall not be required to make good any deficiency in the acreage hereby conditionally granted if it should hereafter be found that there is not a sufficient quantity of lands not otherwise appropriated to make good this act." There were other conditions contained in the act which need not be referred to at this time. The Trustees were directed to issue deeds conveying to the Company "the proportion of lands to which they may become entitled under this act" upon the completion of each section of ten miles of the railway. It will be seen that no specific location or description of lands was embodied in this grant. It remained for the Trustees to designate the location of lands out of which the statutory grant was to be satisfied. There being no lands within the six-mile limit, the act of 1889 can be considered only as a grant of 3840 acres per mile to be satisfied out of any lands of the Trustees not otherwise appropriated. To make this grant effective, however, the

Trustees would have to select, designate and set apart the lands which were to be conveyed in satisfaction of the grant. Hence, whether the Railway Company's rights be based upon the general Railroad Incorporation Acts of 1874 and 1879 or the special act of 1889, the same result follows, viz: There was no grant or any specific lands, but merely a right to receive a certain acreage, the location of which rested in the discretion of the Trustees.

If the rights of the Railway Company rest upon the Special Act of 1889 "To Enlarge and Extend the Franchises" of the Railway Company, it is clear that under the decisions of the Supreme Court of Florida and of the Supreme Court of the United States the land grant contained in that Act is not valid because it was not indicated in the title of the Act.

The Act of May 31, 1889, is unconstitutional and void, because the land grant is not embraced or indicated in the title of the Act, which is "An Act to Enlarge and Extend the Franchise of the St. Cloud Sugar Belt Railway Company." Such a title conveys no intimation or suggestion that the body of the Act contains a grant of many thousand acres of public lands. The title clearly and explicitly points out by appropriate language that the purpose of the law is to enlarge and extend the franchises of the corporation, and, so treated, the title is a specific, apt and clear index or statement of all of the contents of the act except the land grant. The franchise related to the corporate purposes, powers and existence of the Company, not to its land grants from the State. "A railroad's franchise is an incorporeal hereditament, as distinguished from land, which is a corporeal hereditament." (3 Words and Phrases, title: "Franchises"). The word "franchise" has received judicial definition and construction in the decisions of the Supreme Court of Florida.

> "There is nothing here which would authorize us to conclude that this road has been the property of a corporation now dissolved, having lost its franchises by any of the various methods by which this may happen. We therefore treat it as a railroad to which

belongs the franchises usually attached to such a public work. The franchises which usually appertain to such a public work are incorporeal hereditaments as contra-distinguished from *land*, which is a corporeal hereditament; and while the term *tenements* embraces some franchises, still this term as used in the statute must, from the nature of the proceeding, be restricted to tenements upon which an entry can be made, and of which there can be tangible possession."

"Our conclusion is that a railroad is a public work, the possession of which is attended with the right and duty to use and employ the franchises granted by the sovereign in connection with and as appurtenant to it, and that the proceeding of unlawful detainer does not lie to recover the possession of a part of such public work, as this necessarily involves the right to these franchises, and generally, that franchises appertaining to a railway being incorporeal hereditaments, intangible in their character, are not embraced within the terms *lands or tenements* in the act regulating this proceeding."

Gibbs vs. Drew, 16 Fla., 147.

"A franchise has been declared by this Court to be an incorporeal hereditament, not lands or tenements, being intangible it partakes of the nature of personalty."

Leonard vs. Baylen Street Wharf Co., 59 Fla. 547.

Clearly, therefore, by the settled judicial decisions of this State, the word "franchise" in the title of the act under discussion cannot be made to mean or refer to lands. As said in the Gibbs case, "franchise" is a term contra-distinguished from the term "land." The two words mean absolutely different things. Hence, when the Legislature passed a statute relating to franchises, it is certain that it did not pass a statute relating to

lands. And when the franchises of the corporation were enlarged and extended, the land grant was not affected. In fact, the title so clearly refers to the purposes, powers and duties of the Company, that it does violence to every meaning of the word "franchise" to attempt to apply it to a land grant.

In Wade vs. Atlantic Lumber Co., 51 Fla., 638, it was held that a statute entitled "An Act to incorporate" a named railroad is not sufficiently broad to apprise the Legislature and the people that a land grant from the State will be included therein, and that such grant, not being within the subject expressed by the title, is void. This decision was followed and affirmed in the case of Peters vs. Gilchrist, 222 U. S. 483. An act to incorporate and an act to enlarge and extend the franchises of a corporation are so close in purpose and meaning as to be identical. In one case the corporation is created; in the other its incorporeal hereditaments, its powers, its corporate purposes are broadened. In the former case the corporation is formed, and in the latter the charter or act of incorporation is amended. So, if an act to incorporate cannot include a land grant, neither can an act to amend the incorporation contain such a grant. And, in its last analysis, an act to enlarge and extend the franchise of the corporation is merely an act to amend the acts or instruments creating the corporation. In short, the two cases are not merely analogous. They are in substance and principle identical. It is submitted, therefore, that the land grant contained in the Act of May 31, 1889 is, beyond a reasonable doubt, unconstitutional and void.

The argument of the appellants is that the right to acquire real estate is a franchise of a corporation, and that the act of 1889 was therefore properly entitled. The right to hold and acquire real estate is one thing, but a land grant by the Legislature of a part of the public domain is another and a very different thing. We are not compelled to inquire whether the Act of 1889 was valid as vesting in the railroad company the right to

hold or dispose of lands. We contend, however, that the title of the Act does not by any possible construction indicate that the railroad was granted a part of the public domain, and therefore the Peters and Wade cases are controlling. The Acts of 1874 and 1879 contained a grant of certain lands. If these acts did not apply to this particular railroad there is no grant. Therefore, the Act of 1889 was in form and effect a new grant, where none existed before. The lands were in different locations and measured in a different way. The nature of the grants was different and one cannot be connected with the other.

The unconstitutionality of the special land grant Act of May 31, 1889, is plainly manifest; and no rights of the appellant can be predicated upon that act. If they have any claim to the lands in question their rights must be derived from some other source or authority.

If, therefore, the cause of action set up by the appellants exists at all, it must exist only by virtue of an assignment or transfer from the Land Company to the Railway Company of a part of the lands earned by the former Company under its drainage contract. Facts appropriate to support this assumption are not alleged in the pleadings. It is nowhere averred that the Land Company authorized the Trustees to charge it on account of its contract with the acreage claimed by the appellants, and that the Trustees deducted the appellants' acreage claimed from the amount of lands earned by the Land Company.

The letter from the Land Company to the Trustees (page 46 printed transcript) did not assign or convey any of the Land Company's rights to the Railway Company. No conveyance or assignment was ever executed. It is not alleged that any charge against or deduction from the claims of the Land Company against the Trustees was authorized by that Company. The letter merely "released" so much of the lands in certain townships as were "due" the Railway. Evidently this meant "due" under the special land grant act of May 31, 1889, which is unconstitutional as pointed out above. It is certain

that the letter from the Land Company to the Trustees did not authorize or direct the Trustees to diminish or reduce the area of lands due the Land Company by the acreage claimed by or to be conveyed to the Railway Company. The resolutions of the Trustees do not vary or attempt to vary the directions of the letter; nor could the Trustees under the terms of the letter charge the Land Company with the acreage to be conveyed to the Railway Company. The resolution was that the Trustees would convey by authority of the letter "the quantity of lands to which it (the Railway Company) is now entitled (meaning entitled under the Act of May 31, 1889), to be taken from the odd numbered sections," etc. In this light it becomes apparent that the purpose of the letter and resolution was to locate within the Land Company's reservation the lands to which the Railway Company was entitled. No new rights were created. None could have been created because the Trustees were restricted to their statutory powers which did not include the right to donate the lands of the public, except in satisfaction of valid legislative grants.

In fact, it is plain that the amended and supplemental bill goes upon a wholly different theory. If the Railway Company's claims had been rested upon an assignment by the Land Company of a part of its compensation under its drainage contract, it would have been unnecessary to refer to the statutory land grants to the Railway Company, either general or special, and the entire framework of the amended and supplemental bill would have been different.

It results from the foregoing examination of the facts that the appellants' predecessors in title, the St. Cloud Sugar Belt Railway Company, had no claim whatever to the lands in question by virtue of a statutory grant or by assignment from the Land Company. This being so, the resolutions of the Trustees agreeing to convey a certain acreage to the Railway Company were without consideration and therefore ultra vires, because the Trustees had no power to donate or give away the public domain.

Whether appellants' claims rest on the statutory grant or assignment from the Land Company, either or both, the claim is utterly insufficient to form the basis of a contract which can be broken, because, as already pointed out, the contract relates to no lands or property which can be designated or located. In this respect it is fatally vague and indefinite. Nothing has been described which a Court can protect without making a new contract. The contract itself being unenforcible for this reason it cannot be impaired by any of the acts complained of, for on the authorities cited above it must first be established that there is a valid, binding contract before any violation thereof by State authority can raise a federal question. This is especially true with respect to the conveyance by

The clear and unanswerable objection to the claim of jurisdiction upon the ground of a denial of due process of law is the manifest fact that the Trustees have not violated the alleged contract or taken, seized or withheld any lands or other property of the appellants. The failure or refusal to convey the title to the lands claimed by appellants does not operate as a denial of due process of law, because appellants not only have no title or claim to any particular lands, and the grant or contract upon which they rely is invalid. The appellants' rights, if any, are simply a chose in action, as was clearly decided by this Court in the case of Plant Investment Company vs. J. T. & K. W. Ry. Co., supra. The appellants are seeking to justify and support the jurisdiction by contending that the refusal to perform and carry out an executory contract is a denial of due process of law. This is the essential nature of the appellants' claim of jurisdiction, and it is submitted that it is without justification in law.

This case differs in no respect from any other action to require the performance of an executory contract. The Trustees are authorized by the statute of Florida to drain lands, to borrow money, to employ laborers and to carry on extensive business operations. They must in the course of their duties make numerous contracts. The

breach of any such contract, whether intentional or unintentional, could not raise a federal question. If the matters complained of here impair the obligation of a contract or deny due process of law, then the failure of the Trustees to pay a drainage engineer, a laborer or other employee would likewise raise a federal question, upon the basis of which every claim against the Trustees of this nature might be litigated in the Federal Courts. It would result that every contract broken by the Trustees, whether for money, lands or any other matter or thing, could be sued upon in the District Court upon the claim that the Constitution of the United States had been violated and that due process of law had been denied. Similar reasoning would give the Federal Court jurisdiction of every transaction of cities, counties or other governmental agencies where a contract had been broken in any material respect. It is sufficient to say of this position that "it results from the statement of the proposition that it is without foundation."

CONCLUSION

It is submitted that it is plainly apparent from a mere reading of the amended and supplemental bill that the case does not involve a denial of due process of law. This being so, it follows that the decree should be affirmed under Rule 6. In the alternative, the Appellees contend that the transcript does not show any jurisdiction in this Court or the District Court and for that reason the appeal may properly be dismissed. If, however, the Court should upon consideration deny both of these motions and reach the conclusion that the case is not of such a character as to justify extended argument, the Appellees

ask that the case be transferred for hearing to the summary docket under Subdivision 6 of Rule 6 of this Court.

Of Counsel.

Solicitor and of Counsel for The Florida Everglades Land Co., P. A. Vans Agnew, Nathan P. Bryan and wife, and others.

Attorney-General of Florida, Solicitor and of Counsel for Trustees of the Internal Improvement Fund of Florida.

Solicitor and of Counsel for J. M. Barrs.

CHAPTER 3166

AN ACT to amend Section 26 of an Act entitled An Act to Provide a General Law for the Incorporation of Railroads and Canals, approved February 19, 1874, and to Grant Aid to Railroads and Canals Incorporated under said Act.

The People of the State of Florida, represented in Senate and Assembly, do enact as follows:

Section 1. That section 26 of an act entitled "An Act to Provide a General Law for the Incorporation of Railroads and Canals," approved February 19, 1874, shall be so amended as to read as follows: Sec. 26. That upon the completion of each section of six miles and fraction of a section of six miles at the terminus of any railroad or canal incorporated under this act, in accordance with such plans and specifications of construction as may have been agreed upon between the Trustees of the Internal Improvement Fund and the board of directors of such railroad or canal company, it shall be the duty of said Board of Trustees to convey to such railroad or canal company the alternate sections of swamp or overflowed lands lying on either side of the line of such railroad or canal for a distance of six miles, and when there is an insufficiency of such lands lying along and within the distance aforesaid of such line of railroad or canal to make up the number of acres of land hereby granted them, and in that event the deficit shall be located elsewhere and within twenty miles of the line of such railroad or canal in alternate sections as aforesaid: Provided, however, That the lands to be located more than six miles from any such railroad or canal, to supply any deficiency as aforesaid, shall be granted subject to any lien now existing thereon, by reason of any indebtedness incurred under the laws of this State.

Approved March 12, 1879.

CHAPTER 3996

AN ACT to enlarge and extend the franchises of the "St. Cloud Sugar Belt Railway Company."

WHEREAS, The St. Cloud Sugar Belt Railway Company has been heretofore incorporated under the act of Assembly entitled an act to provide a general law for the incorporation of railroads and canals, approved February 19th, 1874, and the amendments thereto, with power to construct, maintain and operate a line of railroad from Kissimmee, in the county of Osceola, to Runnymeade, in said county, and thence to Narcoossee, in said county, upwards of ten miles of which railroad have been constructed and are being operated. Now therefore, for the purpose of enabling the said company to extend the said road and in other respects to carry out the objects of the said incorporation,

Be it enacted by the Legislature of the State of Florida:

That the said St. Cloud Sugar Belt Railway Company in addition to all the rights, privileges and immunities secured to it by the aforesaid general Act of Assembly and amendments thereto, shall have and possess the rights, privileges and be subject to the provisions and conditions as follows:

Section 1. The said company shall be capable and competent in law to purchase, receive, retain and enjoy lands, tenements and hereditaments, goods, chattels and effects, choses in action and in possession, and to give, grant, sell, alien, convey, mortgage, hypothecate or in any other manner known to the law to dispose of the same, also to make traffic contracts with other companies to lease other railroads or itself to be leased, and generally to do and perform all things necessary to carry into effect fully and completely the objects of its incorporation.

Sec. 2. That the line of the said road shall be as at present and thence extending from the town of Runnymede in in a southerly direction through the Kissimmee Valley to tidewater.

Sec. 3. That the capital stock of the said company shall be one hundred and twenty thousand dollars, divided into one thousand two hundred shares of one hundred dollars each, as at present distributed, held and owned, which capital stock may be increased to one million dollars, should such increase be deemed necessary by a majority of the present stock. Said increase of capital stock, when made, to be sold, disposed of or distributed in such manner and on such terms as the Board of Directors of the said company may determine.

Sec. 4. That the right of way in hereby granted to the said company through the lands inuring and ceded to the State of Florida by and under the provisions of the act of Congress of the 28th September, A. D. 1850, for the distance of sixty feet on each side of the track or line of rails of said road, and any and all turnouts of the same, and a fee simple to said lands shall vest in said company for the same as fast as said road is graded, and the right to cut timber, procure the necessary earth, stone and such other materials from all lands above granted of the State, to construct and keep in repair said road is hereby granted.

Sec. 5. That to aid in the construction of said road, the State of Florida hereby grants to this company thirty-eight hundred and forty acres per mile of the lands granted to the State of Florida by the United States under act of Congress of September 28th, 1850, to be taken from alternate sections lying on each side within six miles of the line of said railway; Provided, Said company shall comply with the provisions of the act entitled an act to provide for and encourage a liberal system of internal improvements in this State, approved January 6th, 1855, and the amendments thereto, as to the manner of constructing said railroad. That any deficiency of such lands lying along and within the distance aforesaid of the said line of railroad, held by the State of Florida, to make up the number of acres included in the above grant to the said company shall be taken from any lands owned by the State or that may hereafter accrue to the

State of Florida, and which are not appropriated to other existing corporations; Provided, however, That the State of Florida, or the Trustees of the Internal Improvement Fund shall not be required to make good the deficiency in the acreage hereby conditionally granted, if it shall hereafter be found that there is not a sufficient quantity of lands not otherwise appropriated to make good this act; and also that the lands in said alternate sections shall be subject to entry at State prices to the amount of one hundred and sixty acres by any person who now resides, or that may hereafter settle thereon before completion of said road; and in either case the money paid by such settler shall inure to the benefit of such railroad company.

Sec. 6. The Trustees of the Internal Improvement Fund shall, upon the completion of each section of ten miles of said railway, issue deeds conveying to said company the proportion of lands to which they may become entitled under this act.

Sec. 7. If there shall not be at least forty miles of said railway completed within two years, and the whole of said railway completed within five years from the passage of this act, then the said privileges and franchises herein granted shall, unless extended, be forfeited and declared null and void for such portion of said road not constructed within the period of time specified.

Approved May 31, 1889.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 19[redacted]

No. [redacted] 250

MANILA GAS CORPORATION ET AL.

vs.

[redacted]

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1914.

No. 627.

MANILA INVESTMENT COMPANY ET AL.,
APPELLANTS,

vs.

PARK TRAMMELL, GOVERNOR, ET AL., AS TRUSTEES, ETC.

APPEAL FROM SOUTHERN DISTRICT OF FLORIDA.
ON MOTION TO DISMISS OR AFFIRM.

BRIEF AGAINST MOTION.

Statement.

This appeal was taken by complainants below from a decree dismissing their bill of complaint in the District Court of the United States for the Southern District of Florida. The bill of complaint as finally framed claimed jurisdiction

in that court on the double ground of diversity of citizenship and a Federal question. Motions to dismiss pursuant to the new rules were made below by several of the defendants separately, but upon grounds practically identical. The decree granting the dismissal referred to no particular motion, but after reciting that "in the arguments and briefs filed by complainants every ground of jurisdiction of this court was abandoned except" the violation of the Fourteenth Amendment by taking property without due process of law, ordered that "the motion to dismiss for want of jurisdiction" be granted (Trans., p. 65).

Motion to dismiss the appeal or affirm the decree is now made. The brief of appellees for the motion contains a fair abstract of the case and statement of the contents of the bill of complaint as finally submitted, hence a repetition here is unnecessary; but the crucial averments of the bill from the appellants' standpoint will be briefly restated in the course of the argument. The several forms of complainants' bill before its final reformation were included in the transcript at the instance of appellees, and, with other prelimianry proceedings not now material, cover the first 41 pages. For present purposes the transcript may be considered to begin on page 42 with our "Amended and Supplemental Bill."

ARGUMENT.

The motion under consideration is necessarily based upon the proposition that jurisdiction below depended solely upon the presence of a Federal question, and that the Federal question so depended upon is frivolous, since it is admitted that a supposed Federal question is formally stated in our bill. In other words, the movants must convince the court, not that the constitutional right claimed might, as a result of full argument and mature consideration, be determined to be unfounded or not to have been violated, but that the *claim* of violation is "of such an unsubstantial character as to cause it to be devoid of all merit, and therefore frivolous."

Deming *vs.* Carlisle Packing Co., 226 U. S., 102, 105.

For it has often happened that jurisdiction has been retained to decide a doubtful Federal question even when, upon full consideration, complainants' rights have been determined to be without the constitutional protection claimed.

Field *vs.* Barber Asphalt Co., 194 U. S., 618.
Fayerweather *vs.* Ritch, 194 U. S., 276, 299.
North Am. C. S. Co. *vs.* Chicago, 211 U. S., 306.
Siler *vs.* L. & N. Railroad Co., 213 U. S., 175, 190.

In the last cited case it was said:

> "The Federal questions as to the invalidity of the State statute because, as alleged, it was in violation of the Federal Constitution, gave the circuit court jurisdiction, and, having properly obtained it, that court had the right to decide all the questions in the case, even though it decided the Federal questions adversely to the party raising them, or even if it omitted to decide them at all, but decided the case on local or State questions only. * * *
>
> "Of course, the Federal question must not be merely colorable or fraudulently set up for the mere purpose of endeavoring to give the court jurisdiction."

The length of the argument considered necessary by counsel for movants to demonstrate their contention goes far to prove the contrary; that is, that, whether or not upon full consideration this court may decide appellants to be entitled to the protection of the "due-process" clause of the Fourteenth Amendment, the denial of the right to such protection should not be affirmed without that full consideration.

Louisville & N. R. Co. *vs.* Melton, 218 U. S., 36, 49.

In fact, the thoroughness of the discussion in the brief for the motion of all questions in the case, whether affecting the jurisdiction or simply involving the merits, makes it difficult to reply without similarly broadening the argument. We shall, however, try to confine ourselves to a refutation of those points of appellees' brief pertinent to the question of jurisdiction and to showing the substantiality of the Federal question asserted, leaving the broader considerations affecting the ultimate disposition of the case to be discussed when a hearing on the merits is reached.

In other words, we shall attempt to place ourselves within the position so clearly defined by this court in *Raymond vs. Chicago U. T. Co.*, 207 U. S., 20, at page 35, as follows:

> "The *claim* that the action of the State board of equalization in making the assessment under consideration was the action of the State, and if carried out would violate the provisions of the 14th Amendment to the Constitution of the United States, by taking property of the appellee without due process of law, and by failing to give it the equal protection of the laws, *constitutes a Federal question* beyond all controversy. How that question should be decided is another matter," etc.

For purposes of clarity we shall present our points under appropriate heads.

I.

Effect of the Two Motions Coterminous.

As the decree below was specifically founded upon a want of jurisdiction, and as nothing is here involved except the correctness of the decision below in that regard, it is clear that the same considerations apply to the determination of the motion to dismiss as to the alternative motion to affirm, or, in the language of this court, that they are coterminous; hence they may be considered together.

Deming *vs.* Carlisle Packing Co., 226 U. S., 102.

II.

Case Stated Constitutes Substantial Claim of Deprivation Without Due Process.

Appellants claim to hold the equitable title to some 59,000 acres of land, the legal title to which is partly in the defendant Board of Trustees of the Internal Improvement Fund of Florida (herein called the Trustees) and partly in the other defendants by virtue of conveyances from said board, being so held in trust for complainants as a result of the facts and circumstances set forth in the bill. This claim of appellants to the equitable title to these lands has a double foundation: first, the transfer to them, through the St. Cloud Sugar Belt Railway Company (herein called the Railway Company), of the right thereto, adjudged and confirmed by the defendant Trustees to the Atlantic & Gulf Coast Canal and Okeechobee Land Company (herein called the Land Company); and, second, the transfer from the Railway Company of the right acquired by it in said lands, with the consent and at the request of said Land Company, by compliance with the terms of an act of the legislature of Florida, approved May 31,

1889, followed by a resolution of the Trustees, adopted on June 22, 1891, agreeing to locate the designated number of acres within certain specified townships until then held for the Land Company, and to hold the same for the benefit of the Railway Company until a patent should be issued by the United States, and then to convey the title.

In other words, no question is made, as we understand it, that appellants are the successors and assignees in whatever right the Railroad Company had, but appellees' contention is that our bill fails to show that any right or title was ever validly vested in the Railroad Company either by transfer from the Land Company or by any valid grant under the legislative act, although such title had been recognized and confirmed by formal resolution of the Trustees, which remained for years unquestioned and unrevoked, that is, from 1891 to 1904. In the latter year the then Trustees repudiated the action of the former board, refused to recognize the trust and declared all claims of both the Land Company and the Railway Company null and void. Our contention is that such repudiation by the Trustees as an agency of the State of its obligation to recognize and execute a trust created by a former board and their action in conveying a large part of said lands to others in violation of that trust constitute a taking of the property of appellants without due process of law, contrary to the provision of the Fourteenth Amendment, as claimed in our bill.

An analysis of the allegations of our bill pertinent to this question will show the following: The history of the contract between the Land Company and the former Trustees is set forth in detail (Trans., pp. 43-4, par. III) and a copy attached as an exhibit (pp. 55-8). Upon performance of the contract by the Land Company it was to be entitled to a conveyance from the Trustees of 825,056 acres of land "to be selected by said company in a body, as near as may be, of alternate sections, within the reserve heretofore held for said company under its contract with such Trustees, such selec-

tion to be filed by said company with said Trustees within ninety days after the formal execution of this contract, and said Trustees shall hold the lands so selected in reserve for said company for the purposes and according to the terms of this contract" (p. 56, top).

Paragraph IV (p. 44) alleges full compliance by the Land Company with that contract, the acceptance and approval of such compliance by the Trustees, and their resolution that the Land Company was entitled to the ownership of the above acreage and to a conveyance of the same as soon as the State received a patent therefor from the United States. Paragraphs V, VI, and VII (pp. 45-7) set forth the history of the Railway Company, the manner in which it became entitled by virtue of a land grant to the conveyance of 59,136 acres of land from said Trustees, the application of the Land Company to the Trustees (upon ascertainment that no lands remained ungranted within the place limits of the constructed railroad) for the transfer to the Railway Company of its right to said amount of 59,136 acres in that portion of its 825,056 acres lying within certain specified townships, and the resolution of the Trustees granting said application and agreeing to "convey to said St. Cloud Sugar-Belt Railway Company the quantity of lands to which it is now entitled, to be taken from the *odd-numbered* sections in the townships aforesaid (that is, described in the preamble to the resolution) as soon as patents are obtained from the United States for the State selections in said townships."

It is thereupon alleged that the Railway Company was thus substituted for the Land Company "as grantee and *cestui que trust* of the lands theretofore earned and agreed by the board to be conveyed to the Land Company" to the extent of 59,136 acres in said townships; and that "by virtue thereof the Land Company became divested of the equitable ownership of said 59,136 acres vested in it under said contract of August 1, 1888, and the Railway Company became the equitable owner in its stead of said" acreage and "ac-

quired the vested right to a proper deed thereto as soon as the United States should execute and deliver its patent to the same" (pp. 47-8, par. VIII).

Paragraph IX alleges that, as these 59,136 acres were a part of the 825,056 acres already earned by, and held in trust for, the Land Company, that action of the Trustees neither increased nor diminished its obligations, "but merely made the Railway Company instead of the Land Company the *cestui que trust,*" while paragraph X concisely states that no patent covering these 59,136 acres was actually issued by the United States until the year 1903, and had not been recorded at the time of the filing of the bill, so that knowledge of its issuance had reached complainants only shortly before the institution of this suit (p. 48).

Thereupon, after reciting the mesne conveyances whereby the title of the Railway Company had passed to complainants, complainants' claim of right and remedy is summarized in the following language:

> "Wherefore your orators allege that they are now and have been since 1894 the real owners of said 59,136 acres of land and have been since 1903 entitled to receive from said Board of Trustees, or from the other defendants now holding title as its assignees, a proper deed to the same; that, while being such owners and before the commencement of this suit, demand was made upon the then Board of Trustees * * * for such deed; that such demand was made not only by these three present orators for themselves but also by said Railway Company acting for and on behalf of its grantees aforesaid, but said Board of Trustees declined and refused to comply with the resolutions and conclusive action which years before it had itself adopted and ratified, basing its refusal upon the unconstitutionality of the act of May 31, 1889, and the validity in law of its resolution adopted November 22, 1904, annulling and declaring void any act of said board authorizing any conveyance of land for the benefit of the Land Company subsequent to 1896; and that such denial and

> refusal on the part of said Board of Trustees to execute the trust reposed by law in them as agents of the State of Florida by conveying to your orators the legal title to said described lands violates rights secured to your orators by the Constitution of the United States, and such refusal on the part of said board to execute and deliver to your orators a proper deed or deeds to such lands, taken in connection with the transfers of title to said lands attempted to be made by said board to other parties as hereinafter set forth, * * * is also an attempt to deprive your orators of their property without due process of law, contrary to section one of the Fourteenth Amendment to the said Constitution."

As to the powers and duties of the defendant Trustees and their predecessors in office touching the lands in their control under the law, the bill merely refers in paragraph III to the statute defining them, chapter 610 of the Acts of 1855, now sections 616, 617, and others of the General Statutes of 1906. The Supreme Court of Florida has, however, defined them in various decisions, beginning with *Trustees vs. Bailey*, 10 Fla., 112. In *Yager vs. McNeill*, 60 Fla., 400, it was said that the lands belonging to the fund—

> "were irrevocably vested in five trustees who were State officers and their successors in office, to hold the same in trust for the uses and purposes therein stated, with power to sell and transfer said lands."

And it was further stated in *Trustees vs. Root*, 63 Fla., 666, 686:

> "The statutory duty of the Trustees of the Internal Improvement Fund to fix the price of the public lands as in their judgment may be most advantageous for the drainage of the swamp and overflowed lands as in their judgment may be most advantageous to the fund and the settlement and cultivation of the lands, continues under section 620 of the General Statutes of 1906, and this duty is recognized

> by chapter 3326, Acts of 1881, section 628 of the General Statutes of 1906, as well as in the special acts granting portions of the swamp and overflowed lands to railroad and canal companies and others for different purposes in internal improvement."

But this did not deprive the legislature of the right to issue new directions from time to time not invading *vested rights*, as was explained in *Trustee vs. Root*, 59 Fla., 648, 653:

> "The legislature did not lose control of the lands 'irrevocably vested' in the Trustees. All the authority possessed by the legislature with reference to the lands before the passage of chapter 610 (acts of 1855) was possessed after the passage except that *no vested right could be impaired* by subsequent legislation. The powers and duties of the Trustees with reference to the lands were and are subject to legislative control *when property rights of third persons are not involved.*"

That an obligation to convey, and a trust relation between the Trustees and the grantee pending compliance with that obligation, is created under circumstances similar to those set forth in our bill has been several times recognized by the Supreme Court of Florida, amongst others in

Trustees *vs.* St. Johns R. Co., 16 Fla., 531.
Yager *vs.* McNeill, 60 Fla., 400.

In the former case the trust was enforced; in the latter the complainant failed on the merits of his claim, but no objection was suggested by the court to the character or manner of the relief sought.

Other Florida cases in which the trust relation between the holders of the legal title and the beneficial interest has been recognized, although neither public lands nor State officials were involved, are—

Patrick *vs.* Kirkland, 53 Fla., 768.
Drake *vs.* Brady, 57 Fla., 393.

Indeed, it would seem plain to the ordinary mind that, as the State admittedly transferred to the Trustees all the lands constituting the Internal Improvement Fund to be held by them *in trust* for the purposes intended, that trust must continue and all dealings with that subject-matter must involve a trust relation between those so dealing *until* the obligations of the trust be discharged by the conveyance of the legal title to, and its merger with the equitable title in, the duly entitled *cestuis que trustent*, whoever they might then be; and that any controversy involving the rights of such *cestuis* to such conveyance and merger must concern the administration of the trust and give jurisdiction to a court of equity as a suit for the enforcement of the trust, not for specific performance, the right to conveyance being merely an incident.

Passing to the question whether the refusal to recognize such a trust obligation by the Trustees as agents of the State and its repudiation by their wrongful conveyance of a part of the lands to other grantees makes a case within the protection of the Fourteenth Amendment, that can best be determined by a review of the decisions of this court. We think the allegations of our bill bring the case well within a long line of such decisions, wherein it has been held that similar action by administrative boards or other governmental agencies constitute a wrong within the inhibition of that amendment. We submit the following list of cases as applicable to one phase or another of the question in controversy:

Citizens Ass'n *vs.* Topeka, 20 Wall., 655, 663.
Davidson *vs.* New Orleans, 96 U. S., 97, 102.
Cole *vs.* La Grange, 113 U. S., 1, 4.
Cornelius *vs.* Kessel, 128 U. S., 456.
Pennoyer *vs.* McConnaughty, 140 U. S., 1.
Noble *vs.* Union Logging Co., 147 U. S., 165.
Scott *vs.* McNeal, 154 U. S., 34, 50.
Mo. Pac. R. Co. *vs.* Nebraska, 164 U. S., 403, 417.

C., B. & Q. R. Co. *vs.* Chicago, 166 U. S., 226, 235.
D., L. & W. R. Co. *vs.* Pennsylvania, 198 U. S., 341, 358.
Raymond *vs.* Chicago U. T. Co., 207 U. S., 20.
Home T. & T. Co. *vs.* Los Angeles, 227 U. S., 278.

While some of the foregoing cases involved proceedings against Federal, instead of State, officials or agents, it has been held by this court that the same principles govern the power of the courts over the one as over the other (Tindall *vs.* Wesley, 167 U. S., 204, 212); hence all the cases are in that respect equally applicable.

Permit us to point out wherein we regard some of these cases as pertinent to the present question, and thus minimize the labor of the court.

Cornelius vs. Kessel, 128 U. S., was an action of ejectment brought by Cornelius as grantee of one Puffer, who had received a patent from the United States. An equitable defense, as allowed in Wisconsin, was interposed to the effect that the patent had been illegally issued since a legal entry had been made by, and an equitable title thereby vested in, the grantor of defendants. The State court sustained that defense and this court affirmed its decision upon the following principle (page 460):

> "When the tract, which was subject to entry, was thus purchased and paid for (by the entryman), it ceased to be subject to the disposal of the United States; it was not in equity their property. * * * The legal title, it is true, was retained by them, but they held it as trustee for the benefit of the purchaser; and they were bound upon proper application to issue to him a patent therefor. If from inadvertence or mistake as to their rights, or other cause, they afterwards conveyed that title to another, the grantee with notice took it subject to the equitable claim of the first purchaser, who could compel its transfer to him. In all such cases a court of equity will convert the second purchaser into a trustee of the true owner and compel him to convey the legal title."

Applied to the case at bar, that holding means that, when the Trustees at their meeting on January 10, 1894, accepted the fulfilment and completion of its contract by the Land Company and declared the latter to have earned and to be entitled to the ownership of the 825,056 acres of land (p. 44, par. IV), the reservation previously made in its favor was confirmed and that area definitely "ceased to be subject to the disposal" of the Trustees and continued to be held by them (and any subsequent grantee from them with notice) upon the trusts theretofore declared in favor of the Land Company and, as to the 59,136 acres thereof, in favor of the Railway Company, assignee of the Land Company.

Pennoyer vs. McConnaughty, 140 U. S., was a suit in equity brought in the Federal Court in Oregon against its Board of Land Commissioners to restrain the enforcement of a *statute* which changed the mode of procedure for the purchase of swamp and overflowed lands after the assignor of appellee had made application to the board to purchase a tract and had paid an instalment of the purchase price. The *procedure* of that board in Oregon in the disposition of lands was regulated by statute, instead of being left to the board itself as in Florida, but in other respects the powers and duties of the two boards seem to have been similar (see language of Oregon court quoted in decision, page 22). In the course of its decision this court said:

> "Even if no vested right accrued to the applicant immediately upon the filing of his application and its acceptance by the authorities of the State, it is conceded on all hands that he acquired such a right upon the payment of the twenty per centum of the purchase price of the lands embraced in his application, if such payment was made in accordance with law (p. 20).
>
> "We * * * hold * * * that, by the subsequent payment of the first instalment of the purchase price of the land embraced in his application, he acquired a *vested right to those lands*. In other words, by such payment this contract with the State

> became so far executed as to be embraced in the class of *contracts protected by* section 10 of art. I of *the Constitution,*" etc. (p. 24).

If, therefore, in that case an instalment purchaser acquired a vested right in the land from the first payment, and his assignee was thereby entitled to invoke the protection of the *contract* clause of the Constitution because of such right being violated by a *statute*, so here appellants likewise have a vested right for the protection of which, because of the violation of their official duties by the Trustees as agents of the State in refusing to execute their trust and convey title, they are equally entitled to invoke the protection of the *due process* clause of the Fourteenth Amendment. For, as this court has recently said,

> "While the guaranties of the 14th Amendment cover subjects not included in the contract clause, since the former embraces *every manifestation* of State power and the latter is concerned only with legislative power when exerted so as to impair contracts, yet the fundamental assertion of Federal power made by each amendment is the same when the different subjects to which each is applicable are put out of view. * * *
>
> "The immediate and efficient Federal right to enforce the contract clause of the Constitution as against those who violate or attempt to violate its prohibition, which has always been exerted without question, is but typical of the power which exists to enforce the guaranties of the 14th Amendment."
>
> Home T. & T. Co. *vs.* Los Angeles, 227 U. S., 278, 295, 296.

The application of the foregoing principles is, of course, apart from the inquiry whether the character of the duty resting upon the Trustees would be affected by the supposed want of identity of the lands; but, while we shall touch upon that question later, we think it is one in essence affecting the merits of complainants' case, not the presence of the Federal question.

Noble vs. Union River Logging Co., 147 U. S., was a case involving and deciding many questions, some of which seem very pertinent to the present issue. *Justice Brown* described it as—

> "a bill in equity by the Logging Company to enjoin the Secretary of the Interior and the Commissioner of the General Land Office from executing a certain order revoking the approval of the plaintiff's maps for a right of way over the public lands, and also from molesting plaintiff in the enjoyment of such right of way" (p. 165).

The defendant officials resisted on the ground that the order of revocation was made because plaintiff was found not to be a common carrier, hence not such a railroad company as the act contemplated, and because the original approval had been "made improvidently and on false suggestions, and without authority under the statute." The court will notice the close similarity of that defense to the grounds of revocation upon which the Trustees based their action in the year 1904 (Rec., p. 49). Upon matters here pertinent this court there said:

> "At the time the documents required by the act of 1875 were laid before Mr. Vilas, then Secretary of the Interior, it became his duty to examine them, and to determine, amongst other things, whether the railroad authorized by the articles of incorporation was such a one as was contemplated by the act of Congress. Upon being satisfied of this fact, and that all the other requirements of the act had been observed, he was authorized to approve the profile of the road, and to cause such approval to be noted upon the plats in the land office for the district where such land was located. When this was done, the granting section of the act became operative, and vested in the railroad company a right of way through the public lands, etc. (p. 172).
>
> "The lands over which the right of way was granted were public lands subject to the operation of the statute, and the question whether the plaintiff

> was entitled to the benefit of the grant was one which it was competent for the Secretary of the Interior to decide, and when decided, and his approval was noted upon the plats, the first section of the act vested the right of way in the Railroad Company. * * * A *revocation of the approval* of the Secretary of the Interior, however, by his successor in office was *an attempt to deprive the plaintiff of its property without due process of law*, and was, therefore, void" (p. 176).

So, in the case at bar, the Board of Trustees, as constituted from time to time, was authorized to make contracts regarding the drainage and sale of these lands; indeed, the Trustees had special legislative authority for its dealings with the Land Company as a result of which the lands in question were reserved and held in trust (chapter 3788, Acts of 1887). So, when "that was done"—that is, when the Trustees approved the completion of its contract by the Land Company and embodied that approval by a formal resolution in its records—their power of disposition "became operative" and the equitable title "vested in" the Land Company. Hence, when the Trustees at their meeting on January 10, 1894, resolved that the Land Company had fully performed its contract, approved the reservation of lands theretofore made by it, and agreed to hold the same in trust as specified, that action could not legally be subsequently revoked by any Board of Trustees. And, as said Trustees had already at their meeting of June 22, 1891, accepted an assignment and transfer of the right and title of the Land Company as to 59,136 acres within the designated townships, the action of January 10, 1894, accrued to the benefit of the Railway Company as such assignee and, through it, to the benefit of complainants herein as *its* grantees.

Moreover, in case the act of 1889, extending the limits for location of the Railway Company's land grant, be regarded as constitutional—and whether so or not must be a

matter of merits, not Federal jurisdiction—it can hardly be disputed that the Trustees had power to accept the designation of lands requested by said company; hence their action at the meeting of January 10, 1894, would be a direct acceptance and approval in its favor under the terms of its grant and for a like reason unrevocable by any succeeding board without judicial sanction. Therefore, upon either theory, the action of the Trustees constituted a wrongful deprivation of property within the amendment.

Perhaps more convincing than any other in its language as applied to the facts of the case at bar is *Raymond vs. Chicago U. T. Co.*, 207 U. S., 20. Illinois had created a State Board of Equalization of taxes, which, in addition to the powers its name implies, made the original assessment of the property of corporations of certain classes. The appellee filed its bill in the Federal court, alleging that the manner in which its assessment had been made amounted to a taking of its property without due process of law. We have already quoted at the beginning of this brief the paragraph of the opinion in which *Justice Peckham* held that such a claim constituted a Federal question. We now quote following paragraphs, giving the reason why the action of that board was within the prohibitions of the amendment:

> "The State Board of Equalization is one of the instrumentalities provided by the State for the purpose of raising the public revenue by way of taxation. In regard to corporations of the class of which the appellee and the other corporations involved here are members, it is the duty of that board to make an original assessment upon them. From the decision of the board in making such assessment no appeal is provided for, and each decision is therefore conclusive, except as proceedings for relief may thereafter be taken in the courts. * * * Acting under the constitution and laws of the State, the board therefore represents the State, and its action is the action of the State. The provisions of the 14th Amendment are not confined to the action of the State

> through its legislature, or through the executive or judicial authority. Those provisions relate to and cover all the instrumentalities by which the State acts, and so it has been held that whoever, *by virtue of public position under a State government,* deprives another of any right protected by that amendment against deprivation by the State, violates the constitutional inhibition; and as he acts in the name of the State and for the State, and is clothed with the State's powers, his act is that of the State" (p. 35).
>
> "It was not the mere action of individuals, but, under the facts herein detailed, it was the action of the State, through the board" (p. 37).

So, in the case at bar, the Trustees held the land in controversy as the "instrumentality provided by the State," and from its decisions as to the disposition of that land no appeal is provided for; hence "each decision is therefore conclusive, except as proceedings for relief may thereafter be taken in the courts." Therefore, we submit the conclusion is unavoidable that the action of the Trustees in refusing to recognize any right or title to said lands in complainants and in making a wrongful disposition of a part of them, contrary to an express trust recognized by their predecessors in favor of complainants' assignor, "was in effect the action of the State, through the board," and deprived complainants of a "right protected by that amendment against deprivation by the State."

Lastly, *Home Telephone & T. Co. vs. Los Angeles,* 227 U. S., 278, already once referred to, contains the latest and fullest exposition of the formal propositions embodying "the undoubted significance of that amendment (the 14th) as established by many decisions of this court." We excerpt the following paragraphs of the language of the Chief Justice:

> "To the contrary, the provisions of the amendment as conclusively fixed by previous decisions are generic in their terms, are addressed, of course, to

the States, but also to every person, whether natural or juridical, who is the repository of State power. By this construction the reach of the amendment is shown to be coextensive with any exercise by a State of power, in whatever form exerted" (p. 286).

"Here again the settled construction of the amendment is that it presupposes the possibility of an abuse by a State officer or representative of the powers possessed, and deals with such a contingency. It provides, therefore, for a case where one who is in possession of State power uses that power to the doing of the wrongs which the amendment forbids, even although the consummation of the wrong may not be within the powers possessed, if the commission of the wrong itself *is rendered possible or is efficiently aided by the State authority lodged in the wrong-doer.* That is to say, the theory of the amendment is that where an officer or other representative of a State, in the exercise of the authority with which he is clothed, misuses the power possessed to do a wrong forbidden by the amendment, inquiry concerning whether the State has authorized the wrong is irrelevant, and the Federal judicial power is competent to afford redress for the wrong by dealing with the officer and the result of his exertion of power" (p. 287).

"To repeat: for the purpose of enforcing the rights guaranteed by the amendment when it is alleged that a State officer, in virtue of State power, is doing an act which, if permitted to be done, *prima facie* would violate the amendment, the subject must be tested by assuming that the officer possessed power if the act be one which there would not be opportunity to perform but for the possession of some State authority" (p. 288).

From a consideration of the foregoing cases it appears, we think, that the decisions of the Supreme Court of Florida hereinbefore cited (p. —) are in entire harmony with the decisions of this court; and, upon due consideration of the views of both courts, we fail to see how the contentions on behalf of the movants remain even plausible.

III.

Cases Followed by the Court Below Not Applicable.

The district judge in his decree of dismissal (p. 65) relied expressly upon two decisions of this court involving controversies between municipalities and public-service corporations as to the validity of continuing contracts. We think the principles there applied are quite distinct, as analysis will show.

St. Paul Gaslight Co. vs. St. Paul, 181 U. S., 142, came here on error to a State court asserting that a certain municipal ordinance impaired the obligation of a contract existing between it and the city. It was held that no provision of the ordinance had that effect and that the claim of the company amounted to the "contention that every case involving a controversy concerning a municipal contract is one of Federal cognizance." After referring to cases cited by counsel as sustaining that contention and distinguishing them, this court explained the affirmance of jurisdiction in the last of them on the ground of—

> "it being apparent that the legislative act of impairment which the court found had been given effect to by the State decision was not a mere denial of liability, but amounted to an impairment of the substantial rights conferred by the contract" (p. 151).

As no such impairment was shown in the St. Paul case but, instead, a controversy involving "solely an interpretation of the contract," the jurisdiction was denied.

Dawson vs. Columbia, etc., Co., 197 U. S., was a bill filed by the Trustee under an issue of bonds against its mortgagor and the city of Dawson to restrain the latter from building its own water works and to compel it specifically to perform a continuing contract for the taking and payment of water,

claiming that the action of the city violated the obligation of the contract between it and the Water Company. It is stated that jurisdiction was originally claimed because of diversity of citizenship which, by the arrangement of parties according to their real interests, did not exist, and that "the attempt to give jurisdiction by setting up constitutional rights" was an afterthought; and it was held that the bill presented "a naked case of breach of contract." Therefore the court said:

> "We repeat that something more than a mere refusal of a municipal corporation to perform its contract is necessary to make a law impairing the obligation of contracts, or otherwise to give rise to a suit under the Constitution of the United States" (p. 182).

At another place in this last opinion *Justice Holmes* compares two classes of cases dealing with these contracts between municipalities and their public-service companies, declaring that "the decisions on the two sides of the line are very near each other" (p. 181), but placing the two above cited upon the one side and the *Vicksburg* and *Walla Walla* cases on the other. Although we believe the case at bar is governed, as hereinbefore shown, by considerations distinct from either of these municipal classes, we submit that, so far as similarity exists, our case falls clearly on the "side of the line" occupied by the *Vicksburg* and *Walla Walla* cases.

In the first of these cases the foundation for the Federal question was stated to be as follows:

> "We think that the ordinance of the city of November 7, 1900, whereby the mayor was instructed to notify the waterworks company that the mayor and aldermen deny any liability upon any contract for the use of the waterworks hydrants, and the subsequent action of the city in holding an election to authorize the issue of bonds to buy or construct waterworks of its own, and in refusing to pay the amount due and payable

> under the terms of the ordinance, do not present the mere case of a breach of a private contract to be remedied by an action at law, but disclose an intention and attempt, by subsequent legislation of the city, to deprive the complainant of its rights under an existing contract; and that, therefore * * * the case presented by the bill is * * * within the jurisdiction of the circuit court as presenting a Federal question" (185 U. S., 81).

In the *Walla Walla* case the statement was as follows:

> "The jurisdiction depends specifically upon the allegation in the bill that defendants insist that the contract of the city with the plaintiff was not a valid and binding contract, either in respect to the stipulation binding the city not to erect, maintain, or become interested in any system of waterworks other than those of the plaintiff, or in respect to the stipulation for furnishing water to the city by the plaintiff; and that, regardless of plaintiff's rights, the city refuses to be bound by the contract, and is proposing to borrow money to erect and maintain waterworks of its own; * * * and, in short, that the proposed action of the city is in fraud of plaintiff's rights under its contract with the city, and the protection guaranteed to it under the Constitution of the United States" (172 U. S., 7).

Except as the differing circumstances influenced the complaining parties in these last two cases to rely upon the *contract* clause rather than the *due process* clause, we think there is little difference in principle between them and the case at bar. Here we have no simple case of "a mere refusal of a (Board) to perform its contract," but a refusal to recognize the *property rights of complainants vested* in them as a result of contracts completely performed and terminated years before, coupled with an attempt to revoke the action by which such rights were vested and actually to convey away those rights as to a considerable portion of the property. True it is that in all those cases the wrongful acts of

the defendants were alleged to be the result of some invalid law or ordinance, while in the case at bar complaint is based upon the formal action of the Trustees themselves; but that distinction simply serves to emphasize the invocability of the *due process* clause rather than the *contract* clause (Home Telephone & T. Co. *vs.* Los Angeles, *supra,* at 295) as well as the difference in character between the present case and any one of the four grouped for comparison in the *Dawson* case.

To sum up: the contractual relations of the Trustees with the other original parties had been terminated long years ago by performance on both sides, and had thereafter been merged into a trust relation resulting from such termination of their contract and the consequent payment of the agreed consideration by the one party to the other in the form of a transfer of the beneficial interest in the land so earned. When the contract had been performed, terminated, consummated—and the consideration paid by the transfer of title so far as the nature of that title would admit—and any obligation of one party to the other *under that contract* mutually released—then there could no longer be any violation of its obligation because *that* obligation was no longer continuing but had terminated. A *new* obligation had arisen from the consummation and termination of the contract, one founded upon a trust relation, the obligation of the one party to *hold the title* of certain lands *for the benefit* of the other party and, upon the happening of a certain event, to convey that title to the beneficiary. In short, our case involves the violation and repudiation, by an admitted agency of the State, of vested property rights, not contract obligations.

If that be the correct view, our case is necessarily ruled, we think, by numerous decisions of this court hereinbefore cited and including the *Vicksburg* and *Walla Walla* cases, which sustain instead of denying the Federal jurisdiction.

IV.

Appellants' Rights Not Affected by Non-identification of the Lands.

Although, as we conceive, this contention involves the merits rather than the jurisdiction (Walla Walla *vs.* W. W. Water Co., 172 U. S., 1, 11), and its discussion might well be left to a later occasion, we cannot refrain from a brief allusion, since so much importance is assigned to it and insistence made upon it in the brief for the movants. Indeed, it seems impliedly conceded that, *if* the action of the Trustees, as described by appellants, has resulted in a *deprivation of vested rights*, the protection of the amendment could be invoked; and the insistence is that *no* right of property could *vest* without prior identification of the land.

But that contention ignores one of the admitted and important elements of the situation, as set forth in our bill. It is alleged, and for the present purpose must be taken as true, that the 825,056 acres awarded by the Trustees to the Land Company in the settlement made with it under the contract of August 1, 1888, had been selected in accordance with that contract (Rec., p. 57). The subsequent agreement by the Trustees at their meeting on June 22, 1891 (pp. 46-7), to hold 59,136 acres of this land within designated townships for the Railway Company in place of the Land Company did not withdraw from the trust in favor of the Land Company any part of the reserved acreage within those townships not assigned by it to the Railway Company. And when, at their meeting on January 10, 1894, the Trustees formally declared that the Land Company had earned its 825,056 acres of land and were entitled to a conveyance whenever the Trustees were in a position to convey, the equitable right to the whole area of the townships which included the 59,136 acres assigned to the Railway Company was vested in one or the other of the *two companies*, and the

matter of the selection of their respective portions was one for settlement *between them*—a matter with which the Trustees had nothing to do except to honor their respective requests for conveyance of the legal title after said *cestuis que trustent* had made the division and whenever the Trustees had received their own title by patent from the United States.

But even if the Trustees had then had an equitable interest in the balance of the area of the odd-numbered sections in the designated townships after the deduction of the 59,136 acres reserved for the Railway Company, the lack of selection of the particular sections to be deeded to the Railway Company, whether such selection was to be made by that company or the Trustees, did not prevent its equitable rights from vesting *as against the Trustees or their grantees with notice.*

There can be no question but that the grant from the United States to the State, which was passed to the Trustees in trust, was a grant *in præsenti* and, as was said by this court,

> "passed to the State *at once*, their identification to be made by the action of the Secretary of the Interior, but when identified the title to relate back to the date of the act."
>
> Tubbs *vs.* Wilhoit, 138 U. S., 134, 137.
> State *ex rel. vs.* Trustees, 47 Fla., 302, 325.

For the same reason the power of the Trustees to make contracts or deeds passing their title *in præsenti* cannot be doubted, though selection and identification were to be subsequent. That such was the intention of the legislature so far as the compromise with the Land Company is concerned is shown by the language of chapter 3788 of the Acts of 1887, and, so far as grants to railroad is concerned, by chapter 3166 of the Acts of 1879, one clause of which reads:

> "That upon the completion of each section of six miles * * * of any *railroad* * * *, it shall be the duty of said Board of Trustees to *convey* to such railroad * * * company the alternate sections of swamp and overflowed land," etc.
>
> See also St. Paul & P. R. Co. *vs.* Northern P. R. Co., 139 U. S., 1.

We think also this question comes within the principles applied by this court in the recent decision of *Lane vs. Watts,* 234 U. S., 525. That involved the now famous Baca grant, title to which was held to have passed from the United States in 1864, although the tract was "far beyond the public surveys" then existing and no survey of the location was made until 1905. It was distinctly stated that the passing of title was not inconsistent with the fact that "a survey was necessary to segregate the lands from the public domain" (p. 540).

The Trustees had agreed to hold in trust for the Railway Company the odd-numbered sections located within certain townships equal in area to 59,136 acres, the total area of odd-numbered sections within said townships being then unknown, but being afterwards ascertained by official survey to be 65,594 acres (p. 51, par. XIV). If the total area of odd-numbered sections available for reservation within those townships had not resulted by survey to exceed the 59,136 acres, the beneficial interest of the Railway Company therein as *cestui que trust* could not be doubted; but, until that question of fact could be accurately ascertained by survey, the trust created in favor of the Railway Company covered the *whole area* of odd-numbered sections as a float until survey was made and the right of selection exercised, and whether the right to make such selections rests in the Trustees or in the Company is wholly immaterial.

V.

Particular Points of Brief for Movants.

(1) We are not disposed to deny the assertion that "the Federal question attempted to be raised must be tested solely by the conduct of the Trustees," as it coincides with our contention that the Federal jurisdiction exists *because* the Trustees acted as representatives of the power of the State; but we have already shown the error of the succeeding assertion that "the charge against the Trustees is that they have repudiated and refused to perform an executory contract for the conveyance of lands." Our charge is that they have repudiated the obligation of a trust resulting from a contract long executed and terminated and merged in an equitable title held by them for the benefit of complainants.

(2) It is further contended that our bill "alleges no reason why any court having jurisdiction of the parties and subject-matter cannot * * * afford complainants such relief as they may be entitled to." Very true, but no such allegation is necessary. That proposition would result in the logical corollary that no State court could ever take jurisdiction of a cause involving a substantial Federal question. But it is elementary that the jurisdiction in such cases is concurrent, just as it is concurrent where there is a diversity of citizenship. In each class of cases the complaining party has his *election* to which forum he will resort. That he has full opportunity to resort to the State courts and will obtain perfect justice there, is no answer to his election of the Federal tribunal, though that choice be arbitrary or from unworthy motives (Matter of Reisenberg, 208 U. S., 90, 111). Wherever the law concedes the right of election it is not for the Federal court to question the motive or to refuse or delay the exercise of the correlative duty imposed by law.

McClellan *vs.* Carland, 217 U. S., 268, 281.

Willcox *vs.* Con. Gas Co., 212 U. S., 19, 40.

(3) In discussing the question of "vested right" counsel contend that the railroad incorporation acts of Florida of 1874 and 1879 provided only for grants of land "in place," and that the special act of 1889 "left to the discretion of the Trustees the selection and location of the land." We need not here enter into this discussion, first, because it relates to the merits of the case, not to the Federal question, and, second, because the argument fails in the last premise upon which it is based, that is to say, in the construction attempted to be put upon the action of the Trustees at their meeting of June 22, 1891. Whether the source of the Railway Company's rights was the assignment from the Land Company or the grant in the act of 1889, the action of the Trustees at that meeting clearly operated as a location by consent within the designated townships.

(4) Neither do we follow counsel into their discussion of our right or lack of right to specific performance, because our bill is not framed on that theory. We are claiming a conveyance of the title from the Trustees merely as an incident to the other and principal relief, which is the execution and termination of an existing trust, not of any existing executory contract.

(5) One of the concluding arguments for the motion involves a repetition of their contention (replied to above in subsection 2) in a somewhat different form, to wit: that the "contracts or legal duties" of the Trustees must "be enforced in like manner and to the same extent as those of individuals." Here is an illustration, as we conceive, of the vice underlying the whole course of counsel's argument and theory of defense—the vice of ignoring the very purport and purpose of the 14th Amendment. That purpose, as we understand it, was to safeguard the individual against the power of the State, just as the Fifth Amendment had safeguarded him against the power of the General Government. As between individuals, citizens of the same State, no protection other than that of local courts seemed needed, but in

the unequal contest between the individual and the State the former was safeguarded by being given an option to seek Federal protection if he saw fit.

So it results that acts which, done by a private citizen in his individual capacity, constitute a private wrong and violate no constitutional right of the injured party may, when done by one representing therein the power of the State, be within the inhibition of the amendment. As this court has expressed it:

> "The Fourteenth Amendment prohibits a State from depriving any person of life, liberty or property, without due process of law, but this adds nothing to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society."
>
> United States *vs.* Cruikshank, 92 U. S., 542, 553.

We respectfully submit, therefore, that the Federal question presented by our bill of complaint in the court below was not frivolous, but serious and substantial, and that both motions should be denied.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 250.

MANILA INVESTMENT COMPANY ET AL.,
APPELLANTS,

vs.

PARK TRAMMELL, GOVERNOR, ET AL., AS TRUSTEES,
ET AL.

BRIEF FOR APPELLANTS.

Statement.

This is a direct appeal from the District Court of the United States for the Southern District of Florida. In that court motions to dismiss the bill of complaint had been made separately by several defendants upon practically identical grounds. The decree dismissing the bill upon those motions, after reciting that "in the arguments and briefs filed by complainants every ground of jurisdiction of this court was

abandoned" except the violation of the Fourteenth Amendment by the taking of their property without due process of law, ordered that "the motion to dismiss for want of jurisdiction" be granted (Transcript, p. 65).

At the last term a motion to dismiss or affirm was made in this court by appellees, and the brief then filed by each of the parties contained a statement of the facts shown by the transcript. The decision of that motion was postponed to the regular hearing of the cause, and, as the court will doubtless now again consider the arguments contained in those briefs, since the first question for decision now is the same as under the motion, with a mere change of viewpoint, it is deemed unnecessary here to repeat the detailed recitals of the record contained in those briefs.

As in our former brief, the alleged predecessors in right and equitable title of the complainants, the Atlantic & Gulf Coast Canal and Okeechobee Land Company and the St. Cloud Sugar Belt Railway Company, will be respectively designated as the "Land Company" and the "Railway Company," and the defendant Board of Trustees of the Internal Improvement Fund will be designated as the "Trustees." It may also avoid confusion to explain that the first 41 pages of the transcript contain only proceedings upon an original bill and a first amended bill, all of which were superseded by the filing of an "amended and supplemental bill," which begins on page 42 and recites that it is "to substitute and supersede all previous bills"; hence, for practical purposes, the record begins on the latter page.

A summary of the case made by the bill may be stated as follows: In the year 1881 the Land Company entered into a contract with the then Trustees to perform certain work of drainage for the benefit of the swamp and overflowed lands ceded to Florida by the act of Congress of September 28, 1850. Thereafter, certain differences between those parties having arisen as to the character and extent of performance on the part of the Land Company, the legislature of Florida

intervened and passed an act authorizing and practically directing the Trustees to make "such settlement, arrangement, contract, or compromise as it might deem best." Under this authority the Trustees and the Land Company entered into the "compromise agreement" of August 1, 1888, attached to the bill as Exhibit A (p. 55), whereby, by an expenditure of $206,264 under certain expressed conditions, the Land Company would become entitled to a conveyance from the Trustees of 825,056 acres (the difference between that amount and a total of 2,000,000 acres having already been conveyed), "to be selected by said company in a body, as near as may be, of alternate sections, within the *reserve heretofore held* for said company under its contract with such Trustees, within ninety days after the formal execution of this contract, and said Trustees shall hold the lands so selected in reserve for said company for the purposes and according to the terms of this contract" (p. 56, top).

Paragraph IV (p. 44) alleges full compliance by the Land Company with that contract, the acceptance and approval of such compliance by the Trustees, and their resolution that the Land Company was entitled to the ownership of the above acreage and to a conveyance of the same as soon as the State received a patent therefor from the United States. Paragraphs V, VI, and VII (pp. 45-7) set forth the history of the Railway Company, the manner in which it became entitled, by virtue of a land grant contained in an Act of the Legislature approved May 31, 1889, to the conveyance of 59,136 acres of land from said Trustees, the application of the Land Company to the Trustees (upon ascertainment that no lands remained ungranted within the place limits of the constructed railroad) for the transfer to the Railway Company of its right to said amount of 59,136 acres in that portion of its 825,056 acres lying within certain specified townships, and the resolution of the Trustees granting said application and agreeing to "convey to said St. Cloud Sugar Belt Railway Company the quantity of lands to which it is now entitled, to

be taken from the *odd-numbered* sections in the townships aforesaid (that is, described in the preamble to the resolution) as soon as patents are obtained from the United States for the State selections in said townships."

It is thereupon alleged that the Railway Company was thus substituted for the Land Company "as grantee and *cestui que trust* of the lands theretofore earned and agreed by the board to be conveyed to the Land Company" to the extent of 59,136 acres in said townships; and that "by virtue thereof the Land Company became divested of the equitable ownership of said 59,136 acres vested in it under said contract of August 1, 1888, and the Railway Company became the equitable owner in its stead of said" acreage and "acquired the vested right to a proper deed thereto as soon as the United States should execute and deliver its patent to the same" (pp. 47-8, par. VIII).

Paragraph IX alleges that, as these 59,136 acres were a part of the 825,056 acres already earned by, and held in trust for, the Land Company, that action of the Trustees neither increased nor diminished their obligations, "but merely made the Railway Company instead of the Land Company the *cestui que trust,*" while paragraph X concisely states that no patent covering these 59,136 acres was actually issued by the United States until the year 1903, and had not been recorded at the time of the filing of the bill, so that knowledge of its issuance had reached complainants only shortly before the institution of this suit (p. 48).

Thereupon, after reciting the mesne conveyances whereby the title of the Railway Company had passed to complainants, complainants' claim of right and remedy is summarized in the following language:

> "Wherefore your orators allege that they are now and have been since 1894 the real owners of said 59,136 acres of land and have been since 1903 entitled to receive from said Board of Trustees, or from the other defendants now holding title as its assignees a proper deed to the same; that, while being such

owners and before the commencement of this suit, demand was made upon the then Board of Trustees * * * for such deed; that such demand was made not only by these three present orators for themselves but also by said Railway Company acting for and on behalf of its grantees aforesaid, but said Board of Trustees declined and refused to comply with the resolutions and conclusive action which years before it had itself adopted and ratified, basing its refusal upon the unconstitutionality of the act of May 31, 1889, and the validity in law of its resolution adopted November 22, 1904, annulling and declaring void any act of said board authorizing any conveyance of land for the benefit of the Land Company subsequent to 1896; and that such denial and refusal on the part of said Board of Trustees to execute the trust reposed by law in them as agents of the State of Florida by conveying to your orators the legal title to said described lands violates rights secured to your orators by the Constitution of the United States, and such refusal on the part of said board to execute and deliver to your orators a proper deed or deeds to such lands, taken in connection with the transfers of title to said lands attempted to be made by said board to other parties as hereinafter set forth, * * * is also an attempt to deprive your orators of their property without due process of law, contrary to section one of the Fourteenth Amendment to the said Constitution."

The court below having, as before stated, dismissed our bill upon motion of defendants for want of jurisdiction because it considered that no Federal question was presented, we were entitled to the direct appeal which we have taken (Giles *vs.* Harris, 189 U. S., 475, 486), about which no question is made, and upon this appeal have assigned four errors (p. 67), all of which in effect question the correctness of the holding of the court below that no substantial question of the violation of the due-process clause of the Fourteenth Amendment appears. Hence the questions presented by this record are purely questions of law, and the four errors assigned may be argued as one.

ARGUMENT.

While our brief upon the motion to dismiss or affirm presented the proposition of the existence or non-existence of the Federal question especially from the point of view necessary to dispose of that motion, that is, that the matter of the bill involved "a *bona fide* and reasonable question" of the deprivation of property without due process, contrary to the Fourteenth Amendment (Fayerweather *vs.* Ritch, 195 U. S., 276 299), we believe the effect of the authorities therein cited not only supported that point of view, but demonstrated that the case made by our bill was within the jurisdiction of the court below as really and substantially involving such a deprivation; and we are content to leave that question for decision upon the argument and citations of that brief, with the addition of suggestions upon three points.

Among the decisions of this court cited in our brief on the motion to dismiss or affirm were two classes of cases: one, where the jurisdiction was retained, even though the final result was unfavorable to the Federal right asserted by the party claiming the jurisdiction (Brief, p. 3); the other, where the Federal right was held not only to exist, but also to have been violated (Brief, p. 11). Of the latter the most direct and pertinent upon that point were:

Cornelius *vs.* Kessels, 128 U. S., 456;
Pennoyer *vs.* McConnaughty, 140 U. S., 1;
Noble *vs.* Union River L. Co., 147 U. S., 165;
Raymond *vs.* Chicago U. T. Co., 207 U. S., 20;
Home T. & T. Co. *vs.* Los Angeles, 227 U. S., 278;

and to the discussion of those cases in our former brief we again ask the consideration of the court.

In the brief of opposing counsel upon the motion to dismiss special stress seems to be laid upon three propositions: (A) that, although the acts complained of as wrongfully done by the defendant Trustees were expressly alleged to have

been so done by them in their official capacity as representatives of the power and authority of the State, and, although the relief sought against those defendants was expressly against them as such representatives and would solely affect property placed by the State in trust in their hands as such representatives, yet such a cause of action and the claim to such relief no more involved a claim of violation of the Fourteenth Amendment than if the same officials had been committing a wrong in some individual or non-official capacity; (B) that our bill, though framed upon the theory of the enforcement of a trust, differs in no essential respect from a bill for the specific performance of an executory contract; and (C) that the complainants were not shown to possess either the legal or the equitable title to any specific property.

Upon these three points we desire to cite authorities in addition to those referred to in our brief against the motion.

(A) *Inhibitions of Fourteenth Amendment Aimed at Acts Embodying the Power of the State.*

The failure of counsel of appellees to appreciate the meaning and scope of the Fourteenth Amendment, as we [illegible] hend it, is clearly shown from their argument in s[illegible] f their motion to dismiss, where it is said at the top o[illegible] 14 of their brief:

> "The cause of action stated in this record differs in no essential particular from a controversy between private individuals exclusively. The fact that the contract was made by the State of Florida or its ministerial officers does not change the nature of the case. The title was vested in the Trustees, who can be and have been sued on the contract, as they have been in many other cases in the State and Federal courts for more than fifty years. The ordinary rights and remedies of parties to contracts exist in this case, and it is significant and worthy of comment that the amended and supplemental bill alleges no reason why any court having jurisdiction of the parties and subject-matter

> cannot adjudicate the validity of the contract or grant set up in the bill and afford the complainants such relief as they may be entitled to. This being true, the appellants have not been denied due process of law, because their rights may be inquired into, determined and enforced in like manner as those of the parties to any other contract."

Certainly, the character of the parties does not change the "nature of the case," but it may change the *forum* in which complainants are entitled to seek relief. Certainly, there is no reason "why any court having jurisdiction of the parties and subject-matter cannot adjudicate the validity of the contract" and give the complainants relief; but there is a reason—and it is set forth in the bill—why a *choice of courts* may be given the complainants when not given in a "controversy between private individuals exclusively."

As we understand the numerous decisions of this court interpreting and applying the provisions of the *due-process* clause of the Fourteenth Amendment to the acts of administrative agencies of a State, they are in direct contravention of the assertion of counsel above quoted and declare that the very motive and object of the adoption of that amendment was the protection, not of one individual against another or any combination of others, but of the individual against the agencies of the State and those clothed with State power, thus becoming the complement of the Fifth Amendment, which protects the individual in like manner against Federal power.

As early as 1817 this court, in the case of Bank *vs.* Okely, 4 Wheat. 235, had occasion to construe the equivalent phrase in the constitution of Maryland, and described it as "intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice." Again, in 1875, this court, with quotation of that language, affirmed its meaning by saying:

> "The Fourteenth Amendment prohibits a State from depriving any person of life, liberty or prop-

erty, without due process of law, but this *adds nothing* to the rights of *one citizen as against another.* It simply furnishes an additional guaranty against any encroachment *by the States* upon the fundamental rights which belong to every citizen as a member of society."

United States *vs.* Cruikshank, 92 U. S., 542, 553.

In 1880 the court was called upon to determine the meaning of the civil rights statutes which were described as "legislation to enforce the provisions of the Fourteenth Amendment," and, in defining the purpose and intent of that amendment, it was said:

"The provisions of the 14th Amendment of the Constitution we have quoted all have reference to *State action exclusively, and not to any action of private individuals.* It is the State which is prohibited from denying to any person within its jurisdiction the equal protection of the laws, and, consequently, the statutes partially enumerating what civil rights colored men shall enjoy equally with white persons, founded as they are upon the amendment, are intended for protection against State infringement of those rights. * * *

It is, doubtless, true that a State may act through different agencies, either by its legislative, its executive or its judicial authorities; and the prohibitions of the amendment extend to all action of the State denying equal protection of the laws, whether it be action by one of these agencies or by another."

Virginia *vs.* Rives, 100 U. S., 313, 318.

That case involved the *equal protection* clause; but in its companion case, decided the same day, the court again said:

"A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person

> within its jurisdiction the equal protection of the laws. Whoever, by virtue of a public position under a State government, deprives another of property, life or liberty, *without due process of law*, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it."
>
> *Ex parte* Virginia, 100 U. S., 339, 347.

The foregoing language has been repeated in substance in Chicago, B. & Q. R. Co. *vs.* Chicago, 166 U. S., 226, 234.

Raymond *vs.* Chicago U. T. Co., 207 U. S., 20, 36.

In the first case, it was applied to the action of a judicial tribunal of Illinois whose judgment had deprived the appellant of a certain part of its right of way for a mere nominal compensation, although the deprivation was the result of a proceeding in which it had had opportunity to be heard. The latter case is fully treated in our former brief on page 17, and we call especial attention to the last sentence of the quotation there made sustaining jurisdiction to enjoin the levy of a tax by the taxing commission as a violation of the 14th Amendment *because* "it was *not* the mere action of *individuals*, but * * * it was the action of *the State, through the board*."

So, too, in Home T. & T. Co. *vs.* Los Angeles, 227 U. S., quoted from at length in our former brief, page 19, the quotation there made from page 287 is preceded in the opinion by the following statement of the contention which was overruled:

> "The proposition, hence, applies to the prohibitions of the Amendment the law of principal and agent governing contracts *between individuals*, and consequently assumes that no act done by an officer of a State is within the reach of the amendment unless

> such act can be held to be the act of the State by the application of such law of agency."

That assumption is similar in principle to the contention of appellees in the case at bar, and the contention of the latter must, we think, meet the same fate.

Further, in the same case it is made plain (page 295) that, while the guaranties of the 14th Amendment cover subjects not included in the *contract clause* of the tenth article of the Constitution, the right to enforce the contract clause "is but typical of the power which exists to enforce the guaranties of the 14th Amendment." Hence we may cite as directly applicable to our situation the case of Mo. Pac. R. Co. *vs.* Nebraska, 164 U. S., 403, which involved the contract clause, where it is said on page 417:

> "The taking by a State of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the 14th Article of Amendment of the Constitution of the United States."

If, then, the allegations of our bill show a vested property interest in complainants in the lands described, there can be no doubt that that interest has been "taken by the State" (through its agent, the Trustees) "without the owner's consent, for the private use of another," to-wit: the appellees other than the Trustees. The fallacy of appellees' contention cannot be more aptly expressed than by the Chief Justice on page 286 of his opinion in the Home T. & T. Company case, *supra*, where he said:

> "The vice which not only underlies but permeates the proposition is not far to seek. It consists, first, in causing by an artificial construction the provisions of the 14th Amendment not to reach those to whom they are addressed when reasonably construed; and, second, in wholly misconceiving the scope and operation of the 14th Amendment, thereby removing from the control of that Amendment the great body

> of rights which it was intended it should safeguard, and in taking out of reach of its prohibitions the wrongs which it was the purpose of the Amendment to condemn."

Perhaps we owe an apology to the court for so much reiteration of principles supposed to be long settled and understood, but this trespass upon the patience of the court may, perhaps, be excused as the result of an endeavor to make the fundamental ground of the jurisdiction we are claiming clear and convincing even to counsel for the appellees.

(B) *Enforcement of Trust Essentially Distinct from Specific Performance.*

Appellees are very insistent that our suit is one for specific performance, and that, while labeled one for the enforcement of a trust, there is no essential difference; and this contention is made the basis for an attack not only upon the jurisdiction of the court below, but also upon the merits of our bill, as indicated by other grounds of their motion to dismiss in that court which will be discussed later.

While this was discussed at some length in our former brief (pages 20-23), we wish further to emphasize the essential difference between the cause of action set forth in our bill and any mere right to the specific performance of an existing contract by referring to several additional decisions of this court, two of which were rendered during the last term.

Emblen *vs.* Lincoln Land Company, 184 U. S., 660, was a case where patent had been issued by the United States to the grantor of the appellee company and the appellant had filed his bill to have defendants "declared to hold the title to the property in trust for the use and benefit of complainant," and there was an incidental prayer, as in the case at bar, that the defendant holding the legal title be required to convey it; all of which relief was granted. The same complainant had previously attempted to obtain relief by man-

damus, and this court, in pointing out why that must be denied (161 U. S., 52), said:

> "The patent conveys the legal title to the patentee, and cannot be revoked or set aside, except upon judicial proceedings instituted on behalf of the United States. The only remedy of Emblen is by *bill in equity to charge Weed with a trust in his favor*" (p. 57).

Hence the bill in equity above cited was brought, and there was no suggestion that it was a bill for the specific performance of a contract—in fact, no contract relation had ever existed between any of the parties.

Brown *vs.* Fletcher, Trustee, 235 U. S., 589, was a suit brought in the Federal court in New York "for the purpose of recovering from the Trustee an interest in a trust estate which had been sold, transferred, and assigned by the beneficiary." The basis of jurisdiction was diversity of citizenship, but the defendant claimed that such diversity could not avail because the beneficiary himself, the original assignor, was a citizen of the same State as the defendant, hence that jurisdiction was ousted by the requirements of section 24 of the Judicial Code, because such an interest was the equivalent of a chose in action. In overruling that contention, Justice Lamar, in the course of his reasoning, said:

> "But here there was no contract, and this is not a suit for a breach of a contract. For, whatever may have been the earlier view of the subject, the modern cases *do not treat the relation between trustee and cestui que trust as contractual.* The rights of the beneficiary here depended not upon an agreement between him and Braker, but upon the terms of the will creating the trust and the duty which the law imposed upon the Trustee because of his fiduciary position. And a proceeding by a beneficiary or his assignee for the enforcement of rights in and to the property, held—not in opposition to but—for the benefit of the beneficiary, *could not be treated as a suit on a contract,*" etc.

In that aspect the case was expressly distinguished from Shoecraft *vs.* Bloxham, 124 U. S., 735, with which may be classed Plant Investment Co. *vs.* J., T. & K. W. Ry. Co., 152 U. S., 71. In the case at bar the above language may be paraphrased to the effect that the rights of the complainants depend not upon an agreement between their assignor and the Trustees, but upon the terms of the resolution of June 22, 1891, creating the trust, and the duty which the law imposed upon the Trustees because of their fiduciary position.

True it is that in the Brown case jurisdiction was based upon diverse citizenship, not upon the existence of a Federal question; but it is none the less applicable to refute the much-pressed contention of appellees that no Federal question is here presented, *because* our bill is essentially one for the specific performance of a contract, and does not involve "the relations between trustee and *cestui que trust.*" (Appellees' brief on motion, page 14.) In that case diversity of citizenship, as alleged, was sufficient to sustain the jurisdiction, *because* the basis of the action was held to be a trust relationship, not a contractual one. In our case, if the bill shows a trust relationship between appellants and the Trustees, jurisdiction appears, *because* the wrong done by the Trustees constitutes a deprivation of an "interest in trust property" by the agency of the State, not the breach of a contract obligation by such agency—hence is within the inhibition of the Fourteenth Amendment.

Daniels *vs.* Wagner, 237 U. S., 547 (decided June 1, 1915), was a suit in equity, coming here through a Circuit Court of Appeals, wherein the inferior courts had sustained a demurrer to a bill "to charge defendant with a trust in favor of complainant in land claimed under the United States." It appeared that the State of Oregon had prepared and presented lieu lists of school lands, but, before the final approval of those lists by the Land Department, the State sold to Daniels the land in controversy. Subsequently the Department refused to approve the lists, in consequence of

which an arrangement was made between the Department and the State whereby these lists would be substituted by others, or would be cancelled, and the State would relinquish its claim in favor of its vendees, who might at the same moment enter their lands under Federal laws, and thus save them. Although this plan was carried out, the entries were not allowed, through a mistake in the Land Office, and before the complications could be unraveled the land in controversy had been patented to Wagner—after which the Department refused to interfere. The suit was then brought to charge Wagner with a trust because "Daniels had been deprived of his right to enter the land." A general demurrer was interposed and sustained. After stating the ground of that ruling, this court continues:

> "This brings us to determine whether the Land Department had a right to reject a prior lieu land entry or entries and award the land to subsequent and subordinate applicants under the assumption that it possessed a discretionary right to do so—an authority the possession of which was sustained by both the courts below."

The possession of such a right, the Chief Justice says, would lead to the result that—

> "the commission of a wrong by the officers of the Department in disobeying the act of Congress and in denying to an individual a right expressly conferred upon him by law would become the generating source of a discretionary power to make the disobedience of law lawful and the taking away of the right of an individual legal."

Hence it is concluded that:

> "There being, then, no basis for the assumption of a discretionary power on the part of the Land Department upon which the lieu-land entry or entries were finally rejected and the land awarded to other entrymen who were later in time, the bill stated a cause of

> action sustaining the relief prayed unless the demurrer was rightly maintained for some other reason."

Doubtless it will be urged that this last case is inapplicable because it involved a contest under the Federal land laws, while these appellants are not claiming directly under those laws, but under the general principles of trust relationship. But we understand that the decisions which have enforced trusts against patentees of land from the United States do no more than apply the general doctrine of trusts, and that the *ground* for relief differs in no respect from what it would be under similar circumstances, were the conveyance from a party other than the Government. Moreover, in comparing the above case with our own, it will be noted that there is a mere difference in the particular government concerned and its agency, the "Trustees" being substituted for the Department of the Interior, while the Land Company and its assignees occupy the position of Daniels and the remaining defendants the position of Wagner. While the Trustees did not *convey* before receiving their patent (as did the State in the other case), they did *make a reservation* of the lands for the benefit of the Land Company which expressly imposed on them the *obligation to convey* as soon as patent issued, thus creating the trust relation which could not be terminated until the obligation resulting from that reservation was discharged. As was declared by this court in that case:

> "The Department directed attention to the *fact* that in the meanwhile the right of the vendees to make the proposed entry would be *indubitably preserved,* as the filing of the previous lists by the State had segregated the land, and until the relinquishment was presented *that segregation would continue*";

so, in our case, the segregation of the odd-numbered sections in the specified townships by the resolution of the Trustees in favor of the Railway Company would continue until the aggregate number of acres of swamp and overflowed lands in said odd-numbered sections should be ascertained by sur-

vey, until the same should be reported to the Land Department of the United States and a patent therefor be issued, and until the selection from such aggregate (in case it exceeded the 59,136 acres to be held in trust for the Railway Company) should be made for the Railway Company by whichever party was entitled to make such selection—a matter which cannot affect the present question, but which will be discussed in its proper connection.

If the refusal of the Trustees to recognize, through a mistake of law, the obligation implied from that reservation could nullify complainants' rights, it would, as so aptly said by the Chief Justice in the cited case, "make the disobedience of law lawful and the taking away of the right of an individual legal."

Putting aside, then, for the moment, whatever may be the defects of our bill in other respects, we submit that the cases cited support the proposition that our bill sets forth sufficiently the not unusual case of the imposition of a trust in favor of one party upon lands which have been patented or conveyed by fraud or mistake of law to another party. Many such might be cited; indeed, it was said by this court in a companion case to that last cited that the contrary "is so directly in conflict with the well-settled principle on that subject that we deem it unnecessary to say more" (Daniels *vs.* Johnston, 237 U. S., 568).

Finally, it might be suggested as another distinction between suits to enforce a trust and those for specific performance that the latter are always between the parties to a contract or their privies, while, as shown by the foregoing decisions, the trust relation *may* exist and the trust obligation be imposed entirely independent of contract relations.

The conditions which create a trust relation and the distinctive character of suits to enforce the trust have also been fully recognized by the Supreme Court of Florida:

Trustees *vs.* St. Johns Ry. Co., 16 Fla., 531.
Patrick *vs.* Kirkland, 53 Fla., 768.
Drake *vs.* Brady, 57 Fla., 393.

(C) *An Equitable Interest in the Lands Had Vested in Complainants.*

The contention of appellees that no equitable interest had vested in the appellants is but another phase of their contention that no trust was created because the subject-matter of the trust is too indefinite. At the middle of page 14 of their brief for their motion to dismiss, after stating what seems to them to be our position, it is said:

> "If this were a correct statement of law, which is not conceded, it is based upon what we believe to be a state of facts not sustained by the record. On the contrary, it is manifest that neither the equitable nor the legal title to the property in controversy has ever passed to the appellants or their predecessors in interest."

Certain allegations of our bill are then referred to, concluding with the resolution of June 22, 1891, and it is then said:

> "But the Trustees did not set apart any specifically described lands which they agreed to convey to the Railway Company. They merely undertook by their resolution to designate a limited territory out of which they would subsequently select the lands which they would convey to the Railway Company to satisfy its grant. The effect of the resolution was to restrict to the odd-numbered sections in six townships the selection of the Railway Company's lands instead of making that selection from any of the lands of the Trustees in the State. The range of selection was limited and restricted in part, but the act of selection was not performed or consummated. * * *
>
> "These conditions and facts cannot be contested. It results from them that the title to the lands involved in this suit has never passed to the appellants or their predecessors. Further, it would be impossible for the title to pass to the appellants unless and until the Trustees shall have exercised their administrative discretion and set apart and described the lands which will pass in satisfaction of the grant."

The above embodies what is to us the plainest statement of appellees' position on this point contained in their brief on the motion to dismiss. So far as concerns the *legal* title, their contention is doubtless correct, but the conditions insisted on are not, as we understand it, a prerequisite to the passing of an *equitable title or interest* sufficient for the creation and enforcement of a trust. That a reservation of lands for the use and benefit of a party segregates them from the area subject to sale or disposal and creates in that party such an interest in the lands as cannot be divested until the validity of his interest is determined is the logical result of the case last quoted, Daniels *vs.* Wagner, *supra*. In fact, in the absence of decisions of the Supreme Court of Florida treating expressly of the powers of the Trustees in their dealings with the object of their trust, we are thrown entirely upon decisions of this court defining the powers and duties of the Federal Land Department and the circumstances under which equitable interests in lands are created and enforced, but we believe the same principles are entirely applicable to both situations. There is a long line of such decisions, of which we shall cite a few.

Easton *vs.* Salisbury, 21 How., 426, was a contest, under a statutory proceeding in Missouri, to settle title between a New Madrid certificate, located on the lands, and a Spanish grant. The land had been reserved to await the confirmation or rejection by the Commissioners of the Spanish grant; and, while so reserved, location had been made and patent issued under the certificate. Clearly, the Spanish grant might have been confirmed in whole or only in part; hence the exact area finally to be segregated and passed under it could not be known until the Commissioners had decided, yet this court said:

> "There was no period from the entry and patent of the New Madrid claim in which that claim was valid. The location was not only voidable, but it was absolutely void, as it was *made on land subject to a prior right*" (p. 432).

Stoddard *vs.* Chambers, 2 How., 284, was an ejectment case in which plaintiff's title was founded on a French grant not confirmed until 1836, although his ancestor had obtained a conveyance from the claimant in 1805, while defendants claimed title under a New Madrid certificate located in 1816 and perfected by patent in 1832. In 1811 Congress had enacted that all lands for which a certain class of claims were pending (including such as plaintiff's) should be reserved from sale until the final decision of such claims, and that or similar acts were in force when defendants made their location and obtained their patent. Under these facts the court held as follows:

> "The defendant, under the entry and survey of Peltier, holds the elder legal title to the land in controversy. * * * Until the confirmation of plaintiff's title by the act of 1836, the legal title to the land claimed was not vested in the plaintiff" (p. 315); yet
>
> "At these dates (*i. e.*, location and survey of defendant's grantors) there can be no question that all lands claimed under a French or Spanish title, which claim had been filed with the recorder—as the plaintiff's claim had been—were reserved from sale by the acts of Congress above stated" (p. 317); therefore
>
> "The inquiry here is, whether the defendant has any title, as against the plaintiff. And there seems to be no difficulty in answering the question, that he has not. His location was made on lands not liable to be thus appropriated, *but expressly reserved;* and this was the case when his patent was issued. * * * No title can be held valid which has been acquired against law; and such is the character of defendant's title, so far as it trenches on the plaintiff's. * * * The patent of the defendant, *having been for land reserved* from such appropriation, *is void;* and also the survey of Coontz, so far as either conflicts with the plaintiff's title" (p. 318).

In Wright *vs.* Roseberry, 121 U. S., 488, it was said:

> "'There are cases,' said Chief Justice Marshall, 'in which a grant is absolutely void, as when the State

> has no title to the thing granted, or when the officer had no authority to issue the grant. In such cases the validity of the grant is necessarily examinable at law.' Indeed, it may be said to be common knowledge that *patents for lands* * * * *reserved from sale,* or appropriated, *are void*" (p. 520).

Hewitt *vs.* Schultz, 180 U. S., 139, quotes with approval from a decision of the Land Department that:

> "The general rule alluded to in the opinion, that lands once properly withdrawn by executive order remain so until restored to market by like order or by statute, is not questioned" (p. 155).

Weyerhaeuser *vs.* Hoyt, 219 U. S., 380, is a recent case of pertinency. It was begun by Hoyt "to compel a conveyance of the land and to restrain the cutting and removal of timber during the pendency of the suit on the ground that the title was held by the defendants in trust for complainant," and it was further explained that—

> "The right to relief was principally based upon the contention that the purchase by Jones (grantor of Hoyt) under the timber and stone act was paramount to the *indemnity* selection previously made by the Railroad Company, and hence that the Land Department had fallen into an error of law in patenting the land to the company."

It seems that the Railroad Company first filed its list of indemnity selections, then (because its eastern terminus was held to be at Duluth, not at Ashland) the Department canceled those selections, then Jones made his application to purchase, then the Department made an order "formally withdrawing from entry the selected land east of Duluth in order, as was declared, to preserve the right of the Railroad Company, if any, resulting from the selections previously filed" pending a decision of the legal eastern terminus, and thereafter Jones made his proof, paid his money, and obtained his final receipt. This court afterwards decided that

the terminus was at Ashland, and the Department then reinstated the Railroad Company's selections and canceled the entry of Jones. It was therefore *held* that the title derived from the company was the better because, pending the reservation "to preserve the rights of the Railroad Company resulting from the selections" of *indemnity* lands, such lands were not open to entry or sale, and Jones could not get a good title.

There, so long as it remained undecided where was the eastern terminus of the railroad, it could not be known whether it would be entitled to all or any part of the reserved lands, yet it was held that, the reservation having been made for the benefit of the Railroad Company, it had such an interest in them until the question of the exact limits of its interest was determined that they could not be conveyed to any one else. In the case at bar, the Trustees having in like manner reserved the odd-numbered sections of swamp land in designated townships for the benefit of the Railway Company until it should be ascertained whether those sections should contain more than 59,136 acres, until the patent from the United States should perfect the legal title in the State, and until, in case the said sections should be found to contain more than the 59,136 acres of swamp land, that number of acres was selected and segregated from the total and conveyed to the Railway Company, so long as the purpose of that reservation remained unfulfilled the equitable interest of complainants or their grantors could not be destroyed by a conveyance to other parties, but those parties would be held Trustees for complainants to the same extent as the Board of Trustees itself.

Even with regard to the Federal Land Department, with its statutory power of supervision and correction until actual issuance of patent, it was said in Cornelius *vs.* Kessel, heretofore cited on another point, and repeated in Brown *vs.* Hitchcock, 173 U. S., 473, 478, that—

> "Power of supervision and correction is not an unlimited or an arbitrary power. It can be exerted

> only when the entry was made upon false testimony or without authority of law. It cannot be exercised so as to deprive any person of land lawfully entered and paid for. By such entry and payment the person secures a vested interest in the property and a right to a patent therefor, and can no more be deprived of it by order of the Commissioner than he can be deprived by such order of any other lawfully acquired property. Any attempted deprivation in that way of such interest will be corrected whenever the matter is presented so that the judiciary can act upon it."

And in Michigan L. & L. Co. *vs.* Rust, 168 U. S., 589, which involved the "power of the Land Department over the matter of identification of the particular lands passing under the swamp-land act," after reference to the statutory power continuing until delivery of the patent, it is said (page 593):

> "It is of course not pretended that when an *equitable* title has passed the Land Department has power to arbitrarily destroy that equitable title. It has jurisdiction, however, after proper notice to the party claiming such equitable title, and upon a hearing, to determine the question whether or not such title has passed."

Certainly no greater power can exist in the Trustees than is granted the Federal Land Department, and it is not necessary here to discuss whether such a power as above referred to existed in the Trustees, because the bill alleges that no notice whatever was given appellants or their predecessors in interest of the attempted destruction of their equitable title or interest by the resolution of November 22, 1904, and the conveyances to other parties.

Lastly, there is a decision of an inferior court which seems pertinent and well considered. It was a suit to restrain a sale for taxes of certain odd-numbered sections of land within the limits of a grant made by Congress to the State

of Oregon in aid of the construction of a wagon road. The grant was of "alternate sections * * * designated by odd numbers, three sections per mile, to be selected within six miles of said road;" hence the grant covered only one-half the odd-numbered sections within that limit. Judge *Bellinger* said:

> "But the wagon road has an interest in *all* the odd-numbered sections within the prescribed limits, since its selections must be made from their number. There is a well-recognized distinction between the legal title to lands and an interest in such lands. What the company has is a contingent interest in the lands from which its selections are to be made; and the sale of these lands would operate to prejudice this interest, since, when selections are made, and the grant becomes in this way specific, the company is liable to be confronted with a tax title to these lands, or to some of them," etc.
>
> Altschul *vs.* Gittings, sh'ff, 102 Fed. Rep., 36.

It is plain that in the case at bar the Railway Company and its grantees could not make the selection of the specific 59,136 acres out of the slightly larger body until the Government survey had been made and certified, for two reasons: First, because it could not be known whether any selection would be necessary, as the number of acres of swamp and overflowed lands within the odd-numbered sections of the designated townships might result to be less than the said number agreed to be conveyed to the Railway Company; and, second, because the number of acres of swamp and overflowed lands in any particular odd-numbered section could not be known. Nor would there be any reason for making the selection until the State had received its patent because the conditions of the trust involved no obligation to *convey* whatever selections might be made until such issuance of the patent. Although the patent actually issued in 1903, the bill alleges (page 48, par. X) that it had never been recorded, and its issuance was unknown to complain-

ants until shortly before the institution of this suit. Hence the bill prays, as an equitable result under all the circumstances, that the trust in their favor be enforced against the entire acreage still remaining in the ownership of the Trustees (32,386 acres) and against a pro rata part of the 33,208 acres already conveyed to the other defendants sufficient to make up the difference between said 32,386 acres and the total of 59,136 acres due the complainants—that is, 26,750 acres, or 80.5533% of the acreage conveyed to the other defendants.

Whether complainants' rights shall ultimately be held to be derived through the Land Company, by virtue of its performance of its contract with the Trustees (Tr., p. 55), or from the grant of lands under the legislative acts (*post*, p. 38), we believe the right of selection of the designated quantity of lands in case of a surplus within the specified townships rested with the Railway Company and its grantees, since such is the express provision of both said contract and the legislative acts; but, whether so or not, complainants' rights in the *32,386 acres remaining in the Trustees* cannot be affected, and the question of who may have the right of selection goes merely to the *extent* of the relief to be afforded by the decree.

So far we have treated the situation as between the Trustees and complainants as analogous to the relation between the United States and claimants through the swamp-land grant. But perhaps there is a still closer analogy to the Federal railroad grants, so far as complainants' claim is based upon the land grant to the Railway Company by the legislature of the State. In order to demonstrate this analogy and the consequent applicability of the railroad grant decisions, we propose now to cite the statutes of Florida and the decisions of her court, showing the origin and extent of complainants' rights from that source.

The Board of Trustees of the Internal Improvement Fund was created by the act approved January 6, 1855 (chap. 610,

Laws of Florida), and its general powers and duties were largely defined in sections 2 and 16 of that act (brought down as secs. 617 and 620 of the General Statutes now in force), which read as follows:

> "617. For the purpose of assuring the proper application of said fund for the purposes herein declared, said lands and all the funds arising from the sale thereof, after paying the necessary expense of selection, management and sale, are irrevocably vested in five trustees, to wit: in the Governor of the State, the Comptroller, the State Treasurer, the Attorney General and the Commissioner of Agriculture, and their successors in office, to hold the same in trust for the uses and purposes hereinafter provided, with the power to sell and transfer said lands to the purchasers and receive payment for the same, and invest the surplus moneys arising therefrom from time to time in (specifying certain securities). Said trustees shall have all the rights, property, powers, claims, remedies, actions, suits and things whatsoever belonging to them or appertaining before and at the time of the enactment hereof, and they shall remain subject to and pay, fulfill, perform and discharge all debts, duties and obligations of their trust existing at the time of the enactment hereof or provided for herein.
>
> "620. The Trustees shall fix the price of the pub lic lands included in the trust, having due regard to their location, value for agricultural purposes or on account of timber or naval stores, and make such arrangements for the drainage of the swamp or overflowed lands as in their judgment may be most advantageous to the Internal Improvement Fund, and the settlement and cultivation of the lands; and the said Trustees shall encourage actual settlement and cultivation of the said lands by allowing pre-emptions under such rules and regulations as they may deem advisable; provided, that in no case shall pre-emption for more than one section of land be granted to any one settler."

In 1874 an act was passed "for the incorporation of railroads and canals" (chap. 1987, Laws of Florida, misprinted

on page 45 of the transcript as *1897*), of which section 10 enumerated the powers of corporations formed under it, and sections 24 to 26 provided for the acquirement of rights of way, but no grant of lands was made. This was remedied in 1879 by an amendment of section 26 of the act of 1874 so that it should read as follows:

> "SEC. 26. That upon the completion of each section of six miles and fraction of a section of six miles at the terminus of any railroad or canal incorporated under this act, in accordance with such plans and specifications of construction as may have been agreed upon between the Trustees of the Internal Improvement Fund and the board of directors of such railroad or canal company, it *shall be the duty of said Board* of Trustees *to convey to such railroad* or canal company the alternate sections of swamp or overflowed lands lying on either side of the line of such railroad or canal for a distance of six miles, and when there is an insufficiency of such lands lying along and within the distance aforesaid of such line of railroad or canal to make up the number of acres of land hereby granted them, and in that event the deficit shall be located elsewhere and within twenty miles of the line of such railroad or canal in alternate sections as aforesaid; provided, however, that the lands to be located more than six miles from any such railroad or canal, to supply any deficiency as aforesaid, shall be granted subject to any lien now existing thereon, by reason of any indebtedness incurred under the laws of this State."

To continue chronologically, in 1881 the original contract was made between the Trustees and the Land Company under their power specified in Gen. Stats., sec. 620, *supra*, to "make arrangements for the drainage of the swamp or overflowed lands," and under that contract operations continued until 1885, when, apparently because of a doubt as to the results accomplished by the Land Company, the legislature passed an act (chap. 3639, Laws of 1885) directing an investigation of the work done. This investigation apparently proceeded

until the meeting of the legislature of 1887, for this latter passed an act (chap. 3788, Laws of 1887) amending section 5 of chapter 3639 so that it would read as follows:

> "If from the report of the committee it is found that the Trustees of the I. I. Fund have conveyed to the said A. & G. C. & O. Land Company, or to any person on its account, lands that they have not earned or reclaimed, that the said Trustees be authorized and fully empowered to take such steps as they may deem necessary to recover such lands or any portion thereof; provided, an amicable adjustment of all differences relating thereto cannot be had otherwise between said company and said Trustees, and said Trustees are hereby fully authorized and *empowered to make any such settlement, arrangement, contract* or *compromise* in reference thereto, either with or without suit, as they may deem best to secure and protect the interest of the State and the Fund as well as the prompt and vigorous prosecution of the work of drainage and reclamation."

And it was in obedience to the provision therein made that the compromise agreement of August 1, 1888 (Exhibit A to the bill, Tr., p. 55), was entered into, as is recited in its first paragraph.

One of the provisions of this agreement was that the "drainage reserve" which had been set apart for the Land Company under its original contract of 1881 should be reduced in area so as to—

> "secure to said company a total acreage of two million acres, including lands heretofore conveyed to said company, to be *selected by said company* in a body, as near as may be, of alternate sections within the reserve heretofore held for said company under its contract with such Trustees, such selection *to be filed by said company with said Trustees within ninety days* after the formal execution of this contract, and said Trustees shall hold the lands so selected in reserve for said company for the purposes and according to the terms of this contract."

And the latter part of paragraph III of that agreement shows that the balance of the two million acres still unconveyed and to be held under the terms of the above clause was 825,056 acres, which is the amount mentioned in the final settlement with the Land Company hereinafter to be referred to.

Meantime in the same year, 1888, the Railway Company had been incorporated under the acts of 1874 and 1879, above referred to, and, as thereby authorized, had begun the construction of a line of railroad from Kissimmee to Narcoossee, in Osceola County, Florida, a distance of 15.4 miles, and had construcetd more than ten miles of it when, on May 11, 1889, the legislature passed an "act to enlarge and extend the franchises of the St. Cloud Sugar Belt Railway Company" (chap. 3996, Laws of 1889), which recited in its preamble that its purpose was to enable said company "to extend the said road and in other respects to carry out the objects of the said incorporation," and enacted that "in addition to all the rights, privileges and immunities secured to it by the aforesaid general act of assembly and amendments thereto, shall have and possess the rights and privileges and be subject to the provisions and conditions" expressed in the seven sections of the act. Section 1 was a general grant of powers. Section 2 authorized the extension of the line "from the town of Runnymede in a southerly direction through the Kissimmee valley to tide water." Section 3 authorized an increase in the capital stock. Section 4 granted the right of way over the swamp and overflowed lands and the right to cut timber and procure other materials for construction and repair; and section 7 provided for a forfeiture under certain conditions of the privileges and franchises "for such portion of said road not constructed within the period of time specified." Sections 5 and 6 are as follows:

> "SEC. 5. That to aid in the construction of said road, the State of Florida hereby grants to this company thirty-eight hundred and forty acres per mile of the lands granted to the State of Florida by the United

States under act of Congress of September 28th, 1850, to be taken from alternate sections lying on each side within six miles of the line of said railway; provided, said company shall comply with the provisions of the act entitled An act to provide for and encourage a liberal system of internal improvements in this State, approved January 6th, 1855, and the amendments thereto, as to the manner of constructing said railroad. That any deficiency of such lands lying along and within the distance aforesaid of the said line of railroad, held by the State of Florida, to make up the number of acres included in the above grant to the said company shall be taken from *any lands owned by the State* or that may hereafter accrue to the State of Florida, and which are not appropriated to other existing corporations; provided, however, that the State of Florida or the Trustees of the I. I. Fund shall not be required to make good the deficiency in the acreage hereby conditionally granted, if it shall hereafter be found that there is not a sufficient quantity of lands not otherwise appropriated to make good this act; and also that the lands in said alternate sections shall be subject to entry at State prices to the amount of one hundred and sixty acres by any persons who now reside, or that may hereafter settle thereon, before completion of said road: and in either case the money paid by such settler shall inure to the benefit of such railroad company.

"SEC. 6. The Trustees of the I. I. Fund shall, upon the completion of each section of ten miles of said railway, issue deeds conveying to said company the proportion of lands to which they may become entitled under this act."

It will be noted that the provisions of section 5 above are practically a repetition of the provisions of amended section 26 of the general railroad act, quoted page 27, *supra*, as regards the amount of land and the place limits, the only change being an *extension of the limit* within which the land earned could be *located* or *selected;* and that, as generally provided in such grants, the *selection* of the *indemnity* lands was left to *the company.*

We now pass to the action of the Trustees as set forth in par. VII of the bill of complaint (Tr., p. 46). Prior to June 12, 1891, the State engineer had approved the construction by the Railway Company of its 15.4 miles of road, and at a meeting on the day last mentioned the Trustees ordered a conveyance made to the Railway Company upon its request of the alternate sections within the place limit corresponding to the specified number of miles, but the Commissioner of Agriculture reported that no available lands remained within such limit. Thereafter, at a meeting on June 22, 1891, the Land Company presented a communication to the Trustees, stating that, in order to aid the Railway Company and encourage the further extension of their road, it "does hereby release so much of the lands now reserved to them under their drainage contract" in the specified townships as the Trustees might "convey to said Railway Company on account of lands that may be due them on railway now constructed." The Trustees thereupon adopted a resolution, reciting the amount of land to which the Railway Company was entitled, the report of the Commissioner of Agriculture that no non-appropriated lands remained within the place limit, and the presentation by the Land Company of "written authority for them to convey to the Railway Company the lands now reserved for said Land Company under its drainage contract with the board, and *to which it will be entitled* under said drainage contract," specifying the townships, and they thereby declared

> "That they will, under the authority aforesaid, convey to said St. Cloud Sugar Belt Railway Company the quantity of lands to which it is now entitled, to be taken from the odd-numbered sections in the townships aforesaid, as soon as patents are obtained from the United States for the State selections in said townships."

That resolution was entered on the permanent and public records of the Trustees, and has never been legally revoked or rescinded.

On the 10th day of January, 1894, a meeting of the Trustees was held (Tr., p. 44, par. IV) at which the final accounts of the Land Company under its contract (the "Compromise Agreement"), which had been theretofore submitted, were approved, and the Land Company was declared to have complied with said contract and to be entitled to the ownership of the 825,056 acres earned by it thereunder, a part of which was the 59,136 acres which it had been agreed at the above meeting of June 22, 1891, should be transferred to the Railway Company and held for the latter's benefit (Tr., p. 47, pars. VIII and IX). So that it appears that, whether the equitable title of the Railway Company to, or its equitable interest in, the 59,136 acres was derived through the Land Company or through the railroad land grant statutes, the Trustees had recognized and approved it and had agreed to hold it *in trust* pending the issuance of patent and subsequent selection, if an excess resulted.

We submit that the cited cases show that, under such circumstances, any conveyance made by the Trustees would be subject to the same trust. But, even granting the contrary of that proposition, the right of complainants to the 32,386 acres still held by the Trustees would not be affected—and the bill would entitle complainants to relief to that extent.

Questions Upon the Merits.

If this court shall hold that the court below was right in denying the existence of jurisdiction, then of course the judgment here will be for affirmance—and that will be the end of the case so far as the Federal courts are concerned. But, in case the court below shall be held to have been in error in denying jurisdiction, then, as we understand, this court may go so far for the purpose of shortening litigation and preventing repeated appeals as to determine whether the bill of complaint upon its face is sufficient to warrant any part of the relief prayed.

Giles *vs.* Harris, 189 U. S., 475.

No. Am. C. S. Co. *vs.* Chicago, 211 U. S., 306.

Both the above cases were direct appeals from circuit courts, taken on the ground that the construction or application of the Constitution was involved, as is the case at bar, and in both the test below had been by demurrer—which is the equivalent of a motion to dismiss under the present practice. In both the decree of the lower court dismissing the bill for want of jurisdiction was held erroneous, and this court proceeded to consider what in the former was designated "the substance of the complaint" (p. 486) and in the latter "the merits of the case" (p. 314). We will therefore take up briefly those grounds of the motions to dismiss made in the court below which affect the merits rather than the jurisdiction.

Several such motions were submitted on behalf of different defendants (Tr., pp. 58-64), but the first seven grounds of each are practically identical, and only the first, presented on behalf of the Trustees, contains an eighth ground. We will therefore direct ourselves to that motion which appears on page 58 of the transcript. From a perusal of that motion, it will be seen that its second, third, and fourth grounds are aimed at jurisdiction; the first, fifth, sixth, and seventh at the want of general equity in the bill, and the eighth at a special lack of power to sue because the State is in reality a defendant. These grounds, then, aside from the question of jurisdiction already discussed, may be considered under two heads:

(1) *Want of Equity.*

Some of the considerations above presented in the discussion of the question of jurisdiction have necessarily involved more or less the merits of our bill, and, so far as that may be true, we ask the court to take the same under review for the present purpose, and shall endeavor not to repeat what we have said. For instance, the alleged consequences of the non-identification or non-selection of the 59,136 acres out of the larger area finally patented as swamp and overflowed

lands in the designated townships, has been already fully discussed, not only in this brief, but under subdivision IV (page 24) of our former brief, so that we shall not refer further to it except to urge here in a word that, even granting defendants' contention that the right of selection rested in the Trustees, they have in effect exercised that right by the conveyances they have already made—hence the right of complainants to a *partial* satisfaction of their equity by a conveyance of the lands which the Trustees still control can hardly be denied. The exact extent to which complainants are entitled to relief will be properly determined after issue and final hearing.

One of the most strenuous attacks made upon the equity of the bill in the court below was that complainants could be entitled to no relief because the two sources of title alleged were inconsistent with each other—that is, as stated in the brief of counsel below, that "either one of these claims destroys the other." We know of neither rule nor reason to prevent a complainant from setting forth two different sources of title as bases for the same relief—indeed, one may have been acquired to strengthen the other. As long ago as 1855 this court laid down the principle in the following words:

> "A bill may be originally framed with a double aspect, or may be so amended as to be of that character. But the alternative case stated must be the foundation for precisely the same relief."
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> Shields *vs.* Barrow, 7 How., 130, 144.

Here there is no contradiction in the allegations of fact—simply allegations of derivation of title in a double aspect—so that, in case the claim of derivation from the one source turns out to be erroneous as matter of law, dependence can be placed on the other source. Such a course was also held proper in Dickerson *vs.* Winslow, 97 Ala., 491.

But we think *both* these sources are shown to have transmitted to complainants a valid title or interest. As to the

equitable right which the Land Company had in the 825,056 acres as the result of its performance of the "Compromise Agreement" and the acceptance of such performance by the Trustees, there can be no question, not only because of the direct legislative authority conferred by the act of June 2, 1887, but because of their general powers by the act which created them (Trustees *vs.* Root, 63 Fla., 666, 686). If, then, an equitable right or interest in those 825,056 acres had vested in the Land Company, then it certainly could make a valid assignment or transfer of that interest as to the whole or any part of that acreage; and the only plausible argument against a like equitable interest in the 59,136 acres having vested in the Railway Company is that the combined action of the Land Company and the Trustees, at the meeting of June 22, 1891, did not constitute such an assignment or transfer.

Let us then consider the substance and effect of that action, bearing in mind that the language used, both in the letter from the Land Company and in the resolution of the Trustees, must be construed and interpreted in view of the situation *as it then appeared* to the parties. The Railway Company claimed to have earned, and the Trustees upon the report of their engineer believed it had earned, a specified number of acres of land by the construction of its road, and the company desired to obtain its land from the Trustees. An investigation had resulted in an official report that no unappropriated land remained within the place limits; hence it was necessary for the company to seek unappropriated land elsewhere. Thereupon the Land Company, in order to "encourage the further extension of the railway," came to the relief of the Railway Company and offered to "release" to it, or have it substituted in place of the Land Company in obtaining, the amount of land it was believed to have earned by a transfer of that acreage in the specified townships from the Land Company, to whom they were recognized as belonging, to the Railway Company, which was believed to be entitled to that amount *somewhere;* and all

three parties doubtless assumed that the Railway Company would have been authorized to select these very lands under the act of 1889 had they still been unappropriated by the Trustees. But, granting for the moment's argument that they were laboring under a mistake of law and that the act of 1889 was invalid as a grant, we know of no legal principle that will allow the true intent of parties to an agreement to be overturned because of a mistake in one of the *legal* premises which leads to the agreement (Upton *vs.* Tribilcock, 91 U. S., 45, 50). And bear in mind that the contention that the Trustees "had no power to give away the land of the State" has no pertinency, because *this land already belonged equitably to the Land Company*, and no beneficial interest remained in the State.

It is thus seen that the question before the Trustees then was, not whether the Railway Company *had legally earned* 59,136 acres of land by the construction of its road—that had already been decided as far as they had power to decide it—but whether, having admittedly earned that much, it *could legally locate* the lands so earned within the reserve of the Land Company, and whether the Land Company had such an interest as could be transferred by it to the Railway Company. Even if they were mistaken in the *legal conclusions* reached, that could not vitiate or change the intent of all parties that the Railway Company should *succeed to the rights of the Land Company* in that acreage of land as specified.

The wording of the resolution of the Trustees clearly shows that they so understood the situation and the object to be accomplished. The preamble first recites that the Railway Company has completed its 15.4 miles of road and has thereby earned so much land; then it recites the right of the Railway Company, as they understood it, to locate that land anywhere within the State and the non-existence of any unappropriated land within the narrower limits. Then it states *their* construction of the communication of the Land Com-

pany by recitng that the latter "has filed with the board *written authority for them to convey* to" the Railway Company the land in specified townships "now reserved for the Land Company," etc. And the Trustees then resolved "that they *will*, under the authority aforesaid, *convey* to said St. Cloud S. B. Railway Company the *quantity* of lands to which it is now entitled" out of the odd-numbered sections within the specified townships. Please observe that the phrase "to which it is now entitled" refers to the "quantity," not to the "lands"; that is to say, the Trustees were not at that moment considering the *right* of the Railway Company to 59,136 acres of land; that right had previously been determined by them. But there had been no previous attempt either by the Railway Company or by the Trustees to determine the *location* of the lands to be conveyed to it in satisfaction of its recognized claim; and this action of the Trustees, accepting the "authority to convey" conferred by the Land Company and promising that "they will convey" to the Railway Company "the quantity" specified "to be taken from the odd-numbered sections in the townships aforesaid," was a final and definite determination and action separating said quantity of land from the total of 825,056 acres reserved for the Land Company and agreeing to hold them under exactly the same trusts for the benefit of the Railway Company, thus solving at the expense of the former the question of satisfying the claim of the latter (Tr., p. 48, par. IX). The declaration of the Trustees that "they will, under the authority aforesaid, convey" is consistent with no other interpretation.

Hence, we submit, if the right of the Land Company to its 825,056 acres is shown to be valid, the Railway Company has an equally valid claim to and interest in the 59,136 acres as the transferee and successor to the Land Company by consent of the Trustees, since, as alleged in said paragraph IX, it "merely made the Railway Company instead of the Land Company the *cestui que trust* of said 59,136 acres and reduced by the same amount the 825,056 acres theretofore held in reserve for the benefit of the Land Company."

We believe also that the Trustees did *not* commit error of law in regarding as valid the claim of the Railway Company to the 59,136 acres of land under the legislative grants. The stress of the argument against the validity of this claim rests upon the unconstitutionality of section 5 of the act of May 31, 1889 (quoted, p. 29, *ante*), because not covered by its title as "an act to enlarge and extend the franchises of" the Railway Company.

It is readily conceded that the constitution of Florida contains a provision that "each law enacted * * * shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title" (art. III, sec. 16). Its Supreme Court, however, has followed universal precedent in declaring that every presumption is in favor of constitutionality and a court will declare against it only in cases free from doubt.

Hayes *vs.* Walker, 54 Fla., 163.

A line of decisions also holds that, while the title must express the general subject, it need not specifically cover the "matters connected therewith," nor need it give a synopsis of the means by which the object of the law is to be attained.

State *ex rel. vs.* Green, 36 Fla., 154.
Co. Com'rs *vs.* Jacksonville, 36 Fla., 224.
State *ex rel. vs.* Burns, 38 Fla., 387.
Fla. E. C. R. Co. *vs.* Hazel, 43 Fla., 267.
State *ex rel. vs.* Bryan, 50 Fla., 394.

In determining the constitutionality of this section 5 it is to be borne in mind that the act of 1889 neither *created* the corporation nor *originated* its land grant. We have hereinbefore referred to the general railroad law of 1874 under which the Railway Company was incorporated and have quoted the section of the amendment thereto of 1879 whereby grants of lands were made to railroads incorporated thereunder, and paragraph VI of the bill (Tr., p. 45) alleges the Railway Company was incorporated under those acts, "by

virtue whereof said railway was entitled to the land grant corresponding thereto under the act of March 12, 1879, aforesaid." The amount of land per mile confirmed to the Railway Company by the act of 1889 was exactly the same as that granted to it and all other companies by the act of 1879; hence the only effect of the land-grant section (5) of the act of 1889 was, as alleged in the above paragraph of the bill, that the franchise to obtain lands was "merely enlarged so that the amount of land *previously* donated to it might be selected from any lands then owned by the State or that might thereafter accrue to it not appropriated to other existing corporations," instead of being restricted to a limit of twenty miles from the line of its road. No contention is made, so far as we have been informed, that either the act of 1874 or that of 1879 is invalid; nor, being valid, can it be contended that the Trustees lacked the power to determine whether under *them* the Railway Company had earned its grant, and the Trustees *had* determined that the Company had earned its 3,840 acres per mile for 15.4 miles of track. Indeed, we understand it not to be denied that, had unappropriated lands to that amount or less been found within the twenty-mile limit, the company would have been entitled to such lands under the act of 1879, and no right conferred by section 5 of the act of 1889 need have been invoked. The only effect, therefore, of the land-grant provision of the act of 1889 was to confirm to the Railway Company what prior laws had given it and to *extend the area or limits* within which the land *concededly earned* could be *located*.

Mo. Valley Land Co. *vs.* Wiese, 208 U. S., 234, 248.

In that view we think the title of the act of 1889, not only to the intent of the constitutional provision, but accurately, indicated the purport and scope of every section of the act, including section 5.

Some contention was made below, in support of the argument of unconstitutionality, that the holding of land was no

part of a railroad "franchise." It may be true that the mere holding of land is no part of such a franchise, but the mere *holding* is a different thing from the *right to hold*, as has been explained by this court:

> "The real estate of a corporation is a distinct thing from its franchises. But the right to acquire and sell real estate is a franchise, and the right to *acquire the particular real estate* designated in the charter of this company, and here in question, *is within that category.*"
>
> Davis *vs.* Gray, 16 Wall., 203, 228.

Applying that distinction to the instant case, the Railway Company was granted the right to acquire land from the State by the building of its road under the act of 1879 and as a part of its franchises by virtue thereof. So the "right to acquire the particular real estate * * * here in question" comes exactly "within the category" of "enlarging and extending" that franchise, as expressed in the title of the act of 1889.

The two cases cited by appellees in their former brief as determinative of this question—Wade *vs.* Atlantic Lumber Company, 51 Fla., 638, and Peters *vs.* Gilchrist, 222 U. S., 483—are easily distinguishable. This court in the latter followed the former, since they were really the same case with different parties to the record, while the Florida court rightly decided it upon principles of construction inapplicable here. The act under consideration in those cases was an act of *incorporation* as well as of *original grant*, and the title was limited to "an act to incorporate" the railroad. It need not be doubted that the section of that act containing a land grant, otherwise non-existent and not referred to in the title, was properly held invalid, but we think it far from controlling here.

We therefore submit that either of the two sources from which complainants claim to derive their equitable title to or interest in the 59,136 acres alleged to be held in trust for

them are sufficient upon which to base their right to relief; but, unless *both* be insufficient, the right of complainants cannot be affected. Whichever be the true source of title, the action of the Trustees on June 22, 1891, constituted a declaration of trust in favor of the Railway Company, complainants' grantor, as to the lands claimed by consent of all parties in interest.

(2) *Suit Against the State.*

This contention may be disposed of very shortly in view of the admission made on page 19 of the brief filed on behalf of the appellees on their motion to dismiss or affirm, signed by the Attorney General of Florida as counsel for the Trustees jointly with counsel for the other appellees. It is there said:

> "The refusal of the Trustees to comply with their legal obligations, if any, does not prevent them from being sued thereon; and there is no reason why their contracts or legal duties cannot be enforced in like manner and to the same extent as those of individuals. No facts have been alleged in the bill why an ample remedy is not afforded by an appropriate suit in any court of competent jurisdiction to protect and enforce whatever rights the appellants have on the facts stated."

Certainly, then, the suit cannot be in effect against the State. But, aside from that admission, the State itself has recognized that the Trustees were properly subject to suit in similar cases without being able to escape the jurisdiction by such a plea:

Trustees *vs.* Bailey, 10 Fla., 112.
Trustees *vs.* Gleason, 15 Fla., 384.
Trustees *vs.* St. Johns R. Co., 16 Fla., 531.
Gonzales *vs.* Sullivan, 16 Fla., 791.
Hawkins *vs.* Mitchell, 34 Fla., 405.
Wilson *vs.* Mitchell, 43 Fla., 107, 118.
Trustees *vs.* Root, 59 Fla., 648.

And the Trustees as party defendant in similar cases have often been before this court without any intimation that they were exempt from suit because a suit against them was a suit against the State:

State *vs.* Anderson, 91 U. S., 667.
Trustees *vs.* Greenough, 105 U. S., 527.
Littlefield *vs.* Trustees, 117 U. S., 419.
Union T. Co. *vs.* S. I. N. Co., 130 U. S., 565.
Peters *vs.* Gilchrist, 222 U. S., 483.

Indeed, the non-identity between the State and the Board of Trustees has been pointed out in both jurisdictions:

State vs. Anderson, *supra.*
Trustees *vs.* J. P. & M. R. Co., 16 Fla., 708, 720.

These cases might be supplemented by a long list of the decisions of this court in which the right has been sustained to sue administrative officers of either the State or Federal government touching violations of their official duties as representatives of the State or United States. We shall content ourselves with the citation of a few such cases:

Davis *vs.* Gray, 16 Wall., 203, 221.
Rolston *vs.* Crittenden, 120 U. S., 390.
Pennoyer *vs.* McConnaughty, 140 U. S., 1.
Noble *vs.* Union Logging Co., 147 U. S., 185.
Belknap *vs.* Schild, 161 U. S., 10, 18.
Ex parte Young, 209 U. S., 123.
Philadelphia Co. *vs.* Stimson, 223 U. S., 605, 619.

We consider it unnecessary to elaborate upon these cases and the many other decisions of this court referred to therein.

Conclusion.

For the reasons stated in the foregoing argument we submit that the decree of the court below should be reversed and the cause be remanded to the court below with directions to

assume jurisdiction, overrule the motions to dismiss made by the several defendants, and take such further proceedings in the cause as may be consonant with the principles and practice of equity.

Respectfully submitted,

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CLERK

In the Supreme Court of the United States

October Term 1914

THE MANILA INVESTMENT COMPANY, ET ALS.,

Appellants,

vs.

PARK TRAMMELL AND OTHERS, AS TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA, ET ALS.,

Appellees.

No. 250

BRIEF FOR THE FLORIDA EVERGLADES LAND COMPANY, APPELLEE.

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In the Supreme Court of the United States

October Term 1914

THE MANILA INVESTMENT COMPANY, ET ALS.,

Appellants,

vs.

PARK TRAMMELL AND OTHERS, AS TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA, ET ALS.,

Appellees.

No. 627

BRIEF FOR THE FLORIDA EVERGLADES LAND COMPANY, APPELLEE.

PRELIMINARY STATEMENT.

This is an appeal from a decree of the District Court of the United States for the Southern District of Florida dismissing the Bill of Complaint for lack of jurisdiction. (Transcript page 65). The appellees moved to affirm or dismiss the appeal, and printed arguments and briefs were filed on these motions. The Court postponed the decision of the motions to the hearing of the merits of the cause. By stipulation the parties have now agreed to submit the case without oral argument under Rule 20, Subdivision 1.

The brief of appellees on motion to dismiss or affirm contains a brief abstract of facts and a complete synopsis of the allegations of the amended and supplemental bill of complaint. As the appellants have conceded that "the brief of appellees on the motion contains a fair abstract of the case and statement of the contents of the bill of complaint as finally submitted" (appellants' brief against motion, page 2), it will be unnecessary to review the facts in detail.

ARGUMENT

The determination of this appeal involves the jurisdiction of the United States District Court to entertain the controversy, and the merits of the complainants' case. We shall therefore present our arguments under these general divisions of the subject.

JURISDICTION DOES NOT EXIST UPON THE GROUND OF THE DENIAL OF DUE PROCESS OF LAW.

The complainants have filed a bill of complaint, a supplemental bill, an amended and supplemental bill and an amendment to the amended and supplemental bill. There have been some material changes in the theory of the case as presented by these pleadings. In the original bill and all amendments and supplements thereto, the jurisdiction of the District Court was based upon the diverse citizenship of the parties. At the hearing resulting in the decree granting the motion to dismiss the bill for lack of jurisdiction the complainants abandoned the contention that jurisdiction could be supported by diverse citizenship. In substance, they admitted that the case in that respect was controlled by the decision of this Court in Plant Investment Company vs. J. T. & K. W. Railway Company, 152 U. S., 71. The original bill of complaint, in addition to the averments of diverse citizenship, alleged that the action of the Trustees of the Internal Improvement Fund (hereinafter called the Trustees or the Board) was an attempt to defeat the rights of the complainant "in violation of the Constitution of the United States" and of the State of Florida (Original bill, page 10; Transcript, page 8). It will be observed that the complainants did not in the original bill specifically claim that the action of the Trustees or of the other defendants had resulted in depriving complainants of their property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States. The original bill was filed March 9, 1912, and on

March 3, 1913, an amended bill of complaint was filed, entitled a "supplemental bill," which alleged that the personnel of the Board of Trustees of the Internal Improvement Fund of Florida had changed by reason of the expiration of the terms of office of certain of the members and the substitution of other Trustees by election to office. The bill which was filed March 3, 1913 is not, strictly speaking, a supplemental bill; because it restated the case in an amplified and somewhat different form, and was not confined to the substitution of the successors in office of the Trustees. Substantially, the bill filed March 3, 1913 is an amended as well as a supplemental bill. The supplemental bill filed March 3, 1913, based the jurisdiction upon the diversity of citizenship of the parties and alleged a Federal question in the following language:

> "And your orators further say that such denial and refusal on the part of said Board of Trustees of said Internal Improvement Fund violates the rights of your orators to obtain a deed to their said lands, which said right is secured to your orators by the Constitution of the United States, likewise by the Constitution of the State of Florida, and the action of said Board of Trustees in refusing to execute and deliver such deed to your orators, taken in connection with the transfer of said lands attempted to be made by said Trustees to other parties, as hereinafter set forth in this supplemental bill, is an attempt to deprive your orators of their property without due process of law and is therefore unconstitutional, null and void." (Paragraph VIII, Supplemental Bill, Transcript Page 24).

On December 16, 1913, the complainants filed an amended and supplemental bill which alleged that it was "to substitute and supersede all previous bills" (Transcript Page 42). The amended and supplemental bill of complaint continued the development of the Federal question, the successive stages of which have been above shown, by alleging as follows:

"That such denial and refusal on the part of said Board of Trustees to execute the trust reposed by law in them as agents of the State of Florida by conveying to your orators the legal title of said described lands violated the rights secured to your orators by the Constitution of the United States, and such refusal on the part of said Board to execute and deliver to your orator a proper deed or deeds to such lands, taken in connection with the transfer of title to said lands attempted to be made by said Board to other parties as hereinafter set forth, is an attempt to violate the obligation of the contract entered into by said Board with said Railway Company by its said resolution of June 22nd, 1891 contrary to the provisions of Section X of Article I of said Constitution, and is also an attempt to deprive your orators of their property without due process of law contrary to Section I of the XIV Amendment to said Constitution." (Paragraph XI, Transcript page 49.)

On June 30, 1914, the complainants, evidently still maintaining the view that the jurisdiction could be sustained upon the ground of diverse citizenship, filed an amendment to the amended and supplemental bill alleging among other things the citizenship of the defendant, The Florida Everglades Land Company, and that the amount in controversy exceeded $50,000.00.

The progressive development of the theory of the existence of a Federal question as shown by the successive pleadings filed by the complainants is interesting. The original bill did not allege the denial of due process of law and impairment of the obligation of a contract in violation of the Federal Constitution. This view was not given prominence or clear expression until the amended and supplemental bill was filed on December 16, 1913. As the case was finally presented the jurisdiction was rested upon the following grounds: (a) diverse citizenship; (b) the attempted violation of the obligation of the contract between the Trustees and the Railway Company and (c) the attempt to deprive complainants of due pro-

cess of law. After having developed these points, the appellants abandoned at the hearing the claim of jurisdiction on the ground of diverse citizenship and the alleged impairment of the obligation of a contract. The jurisdiction was finally claimed solely upon the theory that the refusal of the Trustees to execute and deliver proper deeds conveying to complainants the legal title to the lands in controversy deprived the complainants of their property without due process of law in violation of the Fourteenth Amendment.

This view was rejected by the District Judge, who, in a memorandum opinion on the case, said:

> "In my judgment the case made by the bill of complaint under consideration is similar to that made in the cases of St. Paul Gas Light Company vs. St. Paul, 181 U. S., 142, and City of Dawson vs. Columbia Avenue Savings Fund, etc., Company, 197 U. S., 178, to-wit: the claim of a violation of contract and not taking property without due process of law, and that therefore this Court has no jurisdiction to enforce such rights as the complainants may have."

The appellees contend that the pleadings do not show a case in which the State of Florida has deprived the appellants of their property without due process of law, for the following reasons:

(a) No legal or equitable title to the property in controversy has ever become vested in the appellants of which they have been or could have been deprived by the action of the Trustees; because the appellants' claim is not to any lands which have been described or which are capable of identification so as to form the subject of a title, either legal or equitable. The most that can be claimed is that the appellants have the right to have conveyed to them a certain acreage of land which has never been identified or located, and which is incapable of identification or location without future affirmative action by the Trustees.

(b) The appellants' claim is in the nature of a *chose in action*, and not to any vested property rights. The

claim amounts merely to a cause of action for the violation of a contract, and, as pointed out by the District Judge, this does not amount to taking property without due process of law.

(c) The Trustees had and still retain the power to locate the land grant claimed by appellants, which power they have never exercised. The resolution of the Trustees promising to satisfy appellants' land grants within a definitely described larger area was not binding on the successors of the existing Trustees, and, being without consideration, did not constitute a new contract. The resolution was neither a completed act of selection nor a binding or enforcible contract to convey any specific property. The claim of the Railway Company, of which appellants are the successors, remained after the passage of the Trustees' resolution of June 22, 1891, a mere open grant of a definite acreage, and such is still the present condition of the claim. The validity or invalidity of the open land grant of a definite acreage is not involved in this controversy, because the pleadings are not so framed, and it is a matter in which the defendants, other than the Trustees, are not concerned.

(d) The appellees, The Florida Everglades Land, Company and other grantees of the Trustees are not affected by the alleged denial of due process of law. They hold title by deeds from the Trustees which are presumptively valid and effectual and which were executed and recorded long prior to the bringing of this suit. If the appellants' claim is sound that the title of The Florida Everglades Land Company and other grantees of the Trustees is held by them in trust for the appellants, such a trust may be enforced by appropriate proceedings in any Court and does not present a Federal question, but merely a matter of private rights and remedies relating to the ownership of lands.

(e) The Trustees of the Internal Improvement Fund as a quasi public corporation hold the Swamp and Overflowed Lands of the State of Florida in trust to execute said trust and carry out certain statutory purposes. They are subject to be sued in courts of law or

equity in regard to all matters within their statutory powers and duties. Although the Trustees are officers of the State Government, yet in their capacities of Trustees of the Internal Improvement Fund they constitute a separate body or board whose acts may be questioned and whose contracts may be enforced in a court of general jurisdiction. The legal title to the property in question being vested in this Board of Trustees and the appellants having the right to enforce their claims to the property in any Court against the Trustees as defendants, it cannot be said that the act of the Trustees in refusing to perform an executory contract to convey or in repudiating the theory that the property is vested in trust in the appellants constitutes denial of due process of law.

(f) It is not alleged that notice or opportunity to be heard has been denied to the appellants in respect to their claims or the action of Trustees thereon.

These propositions, being closely connected, will be argued together.

The Federal question upon which the jurisdiction is rested is that the State of Florida has taken the appellants' property without due process of law. The proposition necessarily, as in all such cases, involves the determination that property has actually been taken and that the taking has been without due process of law. The appellees' contention is that the appellants have not been able to point out any specific property of which they have been deprived. The injury complained of is not the taking of any property which can be identified, but the "denial and refusal on the part of the said Board of Trustees to execute the trust reposed by law in them as agent of the State of Florida by conveying to your orators the legal title to said described lands. * * * * * and to execute and deliver to your orators proper deed or deeds to such lands." (Parag. XI, Am. and Suppl. Bill, Transcript page 49). In other words the gravamen of the complaint is the failure or refusal of the Trustees to convey lands in satisfaction of an indefinite, uncertain and open claim for a certain acreage. Yet the appellants' contention is that the refusal of the Trustees to convey

in satisfaction of such a vague and uncertain claim to the specific lands involved in this case constitutes a deprivation of property without due process of law within the meaning of the Fourteenth Amendment. The appellants have not sued in this case for a recognition or enforcement of their acreage land grant, nor does the prayer of the bill put in motion the judicial powers of the Court to require the Trustees to select and convey any lands from the fund sufficient to satisfy the statutory grant. The case is an action to have the defendants held trustees of *specifically described lands* for the benefit of the appellants. If the appellants have no title, legal or equitable, to the specific lands which form the subject of this suit, their claim of a Federal question must fail, and *the suit cannot be converted into an action to require the Trustees to recognize the validity of the appellants' open land grant claims.* The defendant, The Florida Everglades Land Company, and other grantees of the Trustees, are not concerned with such a controversy and no Federal question would be presented to sustain such a cause of action against them. The fact is, that the appellants' claim, as held by the District Judge, is one for the violation of a contract, and not for property which has been taken without due process of law. Of course, the violation of a contract is not equivalent to the impairment of the obligation of a contract by a State agency. What is meant in this connection is that the Trustees have simply declined or refused to carry out or recognize the validity or enforcibility of transactions which the appellants regard as a valid contract. Such refusal or denial on the part of the Trustees would amount merely to the breach of an executory contract, and not to the deprivation of the property without due process of law.

This position is amply sustained by the decisions of this Court.

St. Paul Gas Light Co. vs. St. Paul, 181 U. S., 142.

Dawson vs. Columbia Ave. etc. Co., 197 U. S., 178.

McCormick vs. Oklahoma City, 236 U. S., 657-660.

Shawnee Sewerage & Drainage Co. vs. Stearns, 220 U. S., 462-471.

The cases of St. Paul Gas Light Co. vs. St. Paul and Dawson vs. Columbia Avenue Etc. Company, supra, have been discussed in the appellees' brief on motion to dismiss or affirm and their application to this case pointed out. In Shawnee etc. Company vs. Stearns the suit was brought in equity to enjoin the officers of the City of Shawnee from violating its contract to take over the laterals of the Drainage Company which were to be paid for by tax warrants. The contract was made in pursuance of an ordinance of the City. Subsequently the Sewerage Company entered into a contract by which the Company sold to the City its main line of sewers, it being provided that the City would recognize the Company's right to the laterals. It was alleged that the City had refused to carry out the contract for the purpose of constructing its own sewerage system in order to confiscate the Company's property and appropriate the same without due process of law. To sustain the jurisdiction, the Sewerage Company contended that the refusal to carry out the contract and the execution of a contract with another concern to build public sewers in place of those owned by the Sewerage Company operated to deprive the Company of its property without due process of law. Upon these facts the Court said:

"The City, it is alleged, has not attempted to comply with the terms of the contract, but, on the contrary, has made a contract with the Newman Plumbing Company to lay the laterals which it desires. A simple breach of contract is therefore alleged on the part of the City. * * * * The breach of a contract is neither a confiscation of property nor a taking of property without due process of law. The case, therefore, comes within the principles announced in St. Paul Gas Light Co. vs. St. Paul, 181

> U. S., 145. It is clear, therefore, that on the face of the bill the Circuit Court had no jurisdiction of the suit, there being no diversity of citizenship and no real and substantial question arising under the Constitution of the United States being presented by the bill."

It is submitted that the present case affords even less ground for a Federal question, because not only is the case based upon a simple "breach of contract," but the contract alleged to have been broken was too vague and indefinite as to the lands in controversy to be enforcible.

If the appellants have an enforcible contract or a valid trust, there appears to be no reason why the claim cannot be enquired into and the appellants' rights enforced in any Court of competent jurisdiction. The Trustees may be sued, as the appellants have shown in their brief (pages 41 to 42). If the appellants had an equitable title in these lands, it has existed from the time the lands were patented by the United States to the State of Florida, and possibly before that date, because if the lands were in fact Swamp and Overflowed Lands, the execution and delivery of a patent was not essential to the passage of the equitable title. Hence from the time of the passage of the resolution of the Trustees on June 22, 1891, and certainly from April 29, 1903, the date of the patent, the same kind of title existed in the appellants as exists in them now. No facts have occurred which have affected that "equitable title." All that is claimed in the amended and supplemental bill is that the Trustees have since refused to convey the legal title. This being the case, the appellants for more than ten years, at least, have had the right at any time to go into a Court of Equity and require the Trustees or their successors in title to convey to the appellants the lands of which they claim the equitable title. If the appellants are vested with their alleged equitable title, they could have brought separate suits against The Florida Everglades Land Company and other grantees of the Trustees to require the conveyance of the legal title in execution of the trust.

The same right would exist in an action for specific performance, if the transaction constituted a valid contract to convey definitely described property. Whether a trust or a contract, if valid, a cause of action existed and could have been enforced in any Court having jurisdiction at any time after the lands were patented. In this situation, all that can be complained of is the refusal of the Trustees and their grantees to convey the legal title. The fact that the Trustees are State officers, in addition to being Trustees of the Internal Improvement Fund, does not convert their refusal to convey the legal title to lands which they held in trust into a violation of the constitutional amendment which prohibits the State from depriving any person of his property without due process of law. The repudiation of the trust by the Trustees was merely a breach of private rights and gave no greater or different remedies than would follow from similar action between individuals, or which would flow from the failure of the Trustees to convey lands which had been sold by them and paid for by a vendee under a valid written contract of sale or their refusal to pay the salary or wages of an employee of the Board. Counties and municipalities are vested with a part of the sovereign power of the State, and their actions in some respects might constitute a deprivation of due process of law. But the failure to perform a contract or the refusal to convey lands held in trust cannot be regarded as violating the Federal Constitution so as to confer jurisdiction in all such cases on the Feleral Courts. This is exactly what has been decided by the cases above cited.

The appellants' claim amounts to a dry trust and nothing more. They maintain that they have a complete equitable title to the lands described in the bill. The theory of their case, if correct, is that the Trustees and their grantees hold the legal title under an equitable obligation to execute the trust by conveying the legal title to the lands to appellants. This is based upon the theory that the appellants' equitable title is perfect and complete, and relates to lands which can be identified and described. If the equitable title does not measure up

to these requirements, then the appellants have no case at all, except an action against the Trustees alone to require them to satisfy the appellants' open land grant out of any available lands remaining in the Fund. But the case against The Florida Everglades Land Company and other grantees of the Trustees depends upon the right of the appellants to show a perfect and not an incomplete equitable right to the specific lands which this defendant holds by deed from the Trustees.

It seems clear from this view of the situation that the adjudication of the equitable rights and the enforcement of the equitable remedies of appellants do not involve the consideration or application of the Fourteenth Amendment or present a federal question. If the appellants' grant does not attach to the specific lands owned by The Florida Everglades Land Company, then as to that Company the present case has no standing, either in Federal or State courts. On the other hand, if the grant does attach to the specific lands owned by this appellee, the case becomes a simple one of enforcement of completed trust or an executed contract which is within the jurisdiction of any court of equity, and no federal question can be involved.

The appellants have laid stress upon the contention that they have been deprived of their property, but they have not explained how they have been denied due process of law. There is no allegation in the bill that the appellants have not been given notice or opportunity to be heard in respect to the administrative action of the Trustees in repudiating or refusing to carry out their resolution of June 22, 1891. As shown elsewhere in this brief the Trustees possess wide discretionary powers in respect to the trust in their charge, and, as in the case of United States Land Department, the decision of the Trustees upon notice and with an opportunity to be heard will be regarded as affording due process of law. In the absence of allegations negativing the presumption of notice or opportunity for hearing, the Court will not find that the refusal to convey and revocation of the resolu-

tion, even if it resulted in depriving appellants of their property, was without due process of law.

Holding the views above stated regarding the jurisdiction of Federal Courts to entertain this cause, a discussion of the cases cited by the appellants in their brief would not only unreasonably extend the limits of the brief, but would serve no useful purpose; because we do not understand that any of the cases cited directly involves the determination of the facts of this case which are relied upon to sustain the claim that property has been taken without due process of law. Much of the appellants' argument has been devoted to the contention that they have an equitable title to specific lands, and the cases cited bear on this state of facts. None of the cases relied upon determines that the appellants have any vested legal or equitable right in specific property under the conditions which obtain in this case.

We submit that the appellants have not shown by their amended and supplemental bill (1) that they have the legal or equitable title to the specific lands which form the subject of this suit, or (2) that they have a perfect or complete legal or equitable title to the lands in controversy or one which has become a vested right under an executed contract and not a mere chose in action, or (3) that such title has been taken from them by the State of Florida without due process of law.

THE MERITS.

Aside from the question of jurisdiction, the motion to dismiss challenges the merits of the appellants' case and the equity of the amended and supplemental bill of complaint. The first, fifth, sixth and seventh grounds of the motion to dismiss raise the following points:

(a) That the facts stated are insufficient to constitute a valid cause of action in equity.

(b) That the complainants have not made or stated such a case as does or ought to entitle them to any such relief as prayed against the defendant.

(c) That the bill is without equity.

(d) That the appellants have not made or stated any right or title to the relief prayed.

These grounds of the motion involve a consideration of the right of the appellants to maintain the suit, if jurisdiction be sustained.

The appellees contend that the appellants have failed to make out a case, because:

(I) The appellants and their predecessor in title, the St. Cloud Sugar Belt Railway Company, have no valid or subsisting claim to any land grant from the State of Florida, because the special land grant statute of 1889 is unconstitutional.

(II) The Railway Company never became the successor by assignment or otherwise of the rights of the Land Company.

(III) The amended and supplemental bill of complaint does not aver compliance with the conditions of the special land grant Act of 1889.

(IV) The Trustees of the Internal Improvement Fund were vested with the exclusive administrative discretion to select the lands to be conveyed, and their action in refusing to convey the lands in controversy cannot be judicially reviewed.

(V) The appellants' claim of title is neither legal nor equitable and is too indefinite and uncertain to be enforced.

(VI) The bill is without equity, and the relief prayed is not within the jurisdiction of a Court of Equity.

(VII) The appellants' claims are barred by laches.

The arguments applicable to these points will be made in the order in which the points are stated.

I.

THE SPECIAL ACT OF 1889 GRANTING LANDS TO THE RAILWAY COMPANY IS UNCONSTITUTIONAL.

There can be no reasonable doubt about the unconstitutionality of the Act of May 31, 1889, enlarging and extending the franchises of the Railway Company, so far

as that Act attempted to grant lands to the Company in the aid of the construction of its railroad. The subject is fully dealt with in the Appellee's brief on motion to affirm or dismiss at pages 28-31. It was there shown that the title of the Act was "An Act to Enlarge and Extend the Franchises of the St. Cloud Sugar Belt Railway Company." The first section of the statute altered and enlarged the corporate powers and franchises of the Railway Company, dealing generally with the right of the corporation to purchase, hold, sell, mortgage and dispose of property, make traffic contracts, and do all things necessary to carry into effect the objects of its incorporation. The second section of the Act changed the location of the line of the railroad. The third section prescribed the amount of capital stock of the corporation and the methods of its increase and disposition. The fourth section granted the company a right of way through State lands. The remaining three sections of the Act contained a grant to the Railway Company of 3,840 acres per mile of the lands granted to the State under the Act of Congress of September 28, 1850, to be taken from the alternate sections on each side within six miles of the railroad, with a further provision that if there should be a deficiency of lands within the six mile limit, it was to be made up out of any other lands owned by the State not appropriated to existing corporations. It is clear that the statute contains two separate and distinct matters: one being enactments relating to the corporate rights, powers and franchises of the Railway Company as a corporation; and the other, a grant of the public lands of the State of Florida in aid of the construction of the railroad. Not only is there no necessary connection between these two legislative subjects, but the land grant is not expressed in the title of the Act which is "to enlarge and extend the franchises" of the Railway Company. As stated in appellees' brief on the motion, such a title conveys no intimation or suggestion that the body of the Act contains a grant of many thousands of acres of the public domain.

The appellants contend that the Act of May 31, 1889, did not "originate" the land grant or create the corporation. It is true that the corporation was in existence at the time of the passage of the Act. The purpose of the Act, as explained by its title, was to enlarge the *franchises* of an existing corporation. But we are not able to concede that the Act of 1889 did not originate the land grant. On the contrary, whatever may be the meaning of the word "originate", as used in the appellants' argument, it is clear that the land grant here claimed by the Railway Company and its successor in title depends solely upon the Act of 1889, and that if that Act is unconstitutional there is no basis for a claim to any lands on the part of the appellants. Whatever rights the appellants may have in the property involved in this suit depend upon and must be supported solely by the Act of 1889. If that Act is unconstitutional, they have no right or title, either legal or equitable, which will support their case. In stating this proposition, we assume, as elsewhere shown herein, that the Railway Company did not acquire a title to any lands from the Land Company by assignment or otherwise, and therefore that the appellants' title is derived solely from the legislative land grant claimed by the Railway Company.

The pleadings and arguments of the appellants leave no question that the alleged legislative land grant, if it exists at all, must be found in the General Incorporation Act of 1874 as amended by the Act of 1879, or in the Act enlarging the franchises of the Railway Company, approved May 31, 1889. An examination of the General Incorporation Act as amended seems therefore to be necessary in order to demonstrate the unsoundness of the contention that the Act of 1889 did not "originate" the "railway land grant, but that the franchises of the Railway Company were merely enlarged, so that the amount of land previously donated to it might be selected from any lands then owned by the State." (Appellants' brief, page 38.)

On February 19, 1874, the Legislature passed an Act entitled "An Act to Provide a General Law for the In-

corporation of Railroads and Canals." (See Chapter 1987, Laws of Florida). The Act of 1874 contained no land grant in aid of the construction of Railway Companies although it gave a right of way two hundred feet wide across the lands of the State on the line of the proposed Railway. The only other reference in the act to the public lands is in Section 26, which is as follows:

> "The Trustees of the Internal Improvement Fund of this State shall have the power to grant to any railroad or canal, or to sell at such price as they may deem to be for the best interest of the State, any lands belonging to this State which may be required for the purposes of the road or canal in excess of the 200 feet as herein provided."

It will be seen that this Act is not a grant at all. It merely confers authority for the Trustees to grant or sell, at such price as they may deem for the best interests of the State, any lands required for the purpose of the road in excess of the right of way. The obvious effect of Section 26 was to authorize the Trustees, in their discretion, to grant or sell lands to a railroad "which may be required for the purposes of the road;" that is, not as a subsidy but as a necessity for the physical construction or operation of the railway. The power to grant or sell or to refuse to grant or sell was vested in the Trustees. They had discretion to grant without consideration or to sell for such price as they deemed best, or to refuse to do either. They were the exclusive judges of the propriety of selling and of the terms of the sale. That this construction was generally approved and acted upon is manifest from the fact that the Legislature of 1879 saw fit to amend the section by the Act of 1879. A copy of the amended section appears on page 36 of the appellees' brief on motion to dismiss or affirm.

It will be noted that the Act of 1874 was entitled an "Act to provide a general law for the incorporation of railroads and canals." This title was entirely appropriate, because the act contained no land grant, other than the necessary right of way over State lands. It did not

contain a grant or subsidy in aid of the construction of the road. On the other hand, when the Legislature in 1879 amended Section 26 of the Acts of 1879, the title of the amending Act (Chapter 3166) was as follows:

> "An Act to amend Section 26 of an Act entitled 'An Act to provide a general law for the incorporation of railroads and canals,' approved February 19th, 1874, *and to grant aid to railroads and canals incorporated under said act.*"

The difference between the Acts of 1874 and 1879 consisted in the fact that the later Act contained a special land grant to aid in the construction of every railroad incorporated under the General Railroad Laws of the State, whereas the earlier Act contained no such general grant. Recognizing this fundamental and important distinction, the Legislature pointed out to the people of the State the effect of the amending Act of 1879 by specifically calling attention to the fact that the effect of the proposed amendment was to grant aid to railroads and canals incorporated under the general act. As early, therefore, as March 12, 1879, the Legislature has established the policy that the purpose of acts of this kind must be expressed in the title.

It is remarked in the appellants' brief that "no contention is made, so far as we have been informed, that either the Act of 1874 or that of 1879 is invalid." It is not contended that the act of 1874 is invalid; but it did not contain any general land grant to the Railway Company, and it fails to give any support whatever to the appellants' claim to the lands in controversy. The Act of 1879 is not claimed to be invalid on account of any defect in the title; because the subject is briefly but clearly expressed in the title in appropriate language. In this respect the Act of 1879 differs from the special act of 1889, and this very difference emphasizes our contention that the latter act is void because it fails to comply with the constitutional requirement which was so fully met in the title of the Act of 1879.

At the time of the incorporation of the St. Cloud Sugar Belt Railway Company the general incorporation law amended by the Act of 1879 contained a valid land grant of the alternate sections of swamp and overflowed lands lying on each side of the railroad for a distance of six miles or twenty miles. If there had been swamp and overflowed lands within twenty miles of the line of the Railway Company, the land grant would have applied; but it is conceded that there were no such lands. The amended general incorporation act did not apply to the St. Cloud Sugar Belt Railway Company, because the conditions under which the Act could take effect with the respect to this corporation did not occur. In legal effect, so far as the Railway Company is concerned, the acts of 1874 and 1879 did not exist. The result was the same as if these acts had expressly and in so many words provided that they should not apply to or be construed as making any land grant to the St. Cloud Sugar Belt Railway Company. Hence, it is certain that prior to the passage of the act of May 31, 1889, the Railway Company had no land grant. The Act of 1889 was passed to supply this defect. The act of 1889 did not provide that the limitations of the act of 1879 in respect to the location of the land grant should be removed with regard to this railroad, nor was any attempt made to amend the general grant or change its application to the St. Cloud Sugar Belt Railway Company. Instead, the Legislature passed a special act limited in its operation to St. Cloud Sugar Belt Railway, and thereby attempted to grant to it 3840 acres per mile of the public lands in aid of the construction of the road. This statute is independent of and separate from all previous legislation on the subject, and the Act of 1889 must be tested and measured without reference to the general railway incorporation act.

It is, we think, an unwarranted assumption to contend that the land grant provisions of the Act of 1889 merely confirmed to the Railway Company the land grants which prior laws had given to it, or that the act simply extended the area within which the lands granted could be located. (Appellants' brief, page 39). It can-

not be successfully contended that the Railway Company then, or ever, had any land grant, because there was no existing law under which lands could be claimed. The Railway Company must have understood these facts when it constructed its road. The conditions and limitations of the grant, as well as its scope and application, were obvious to the Railway Company at all times. The land grant act in the existing statutes did not apply; and therefore it cannot be successfully contended that the Railway Company had earned or could have earned any lands. The appellants' contention that the Act of 1889 was simply an enlargement of the field of application of the prior land grant acts is not supported by the history and language of the legislation on the subject.

There is no escape from the conclusion that the special land grant act of 1889, under which the appellants' title is claimed, was a new and independent statute. This is not true, however, in regard to the corporate powers and franchises of the Railway Company. The corporation had been organized under the general laws, and it possessed only the powers granted by the statute. The act of 1889 professed in its title to extend and enlarge the franchises conferred upon the corporation by virtue of its organization under the existing general act. Parts of the act of 1889 were consistent with the title. Certain sections of the act gave the Railway Company corporate powers and rights which it had not formerly possessed, changed the authorized line of its railroad and amended the corporate charter in regard to the amount and disposition of its capital stock. All of these provisions were strictly in accordance with the title of the Act. They did in fact "enlarge and extend the franchises" of the Company. But the Act attempted to go further and grant a part of the public lands of the State under a title which had effect of deceiving or diverting the attention of the public and of the Legislature itself. (Wade vs. Atlantic Lumber Company, 51 Fla., 638). The fact that the amount of lands per mile granted to the Railway Company by the act of 1889 was exactly the same as that granted by the amendment of 1879, cannot be

given any weight in construing the former act. It is evident that the Legislature followed its general policy in granting to the Railway Company 3840 acres per mile, which is equivalent to every alternate section within the limit of six miles of the railroad. Whether the identity of the acreage in these acts is a coincidence or a matter of settled legislative policy is immaterial.

The point under discussion is the construction and application of the constitution of Florida. As held in Peters vs. Gilchrist, 222 U. S. 483, and in many other cases, this Court will follow the decisions of the State Supreme Courts upon the question whether a law has been passed in such a manner as to become a valid statute under the constitution of the State. This is not a Federal question, and the Supreme Court of the United States is concluded by the decisions of the Supreme Court of the State. Applying this rule in the case last cited this Court has held, adopting the conclusion of the Florida Supreme Court, that an act of the Legislature of the State of Florida entitled "An Act to incorporate" a certain railway company could not constitutionally embrace a grant of public lands in aid of the construction of the railway, because the title of the act did not express or indicate the fact that the body of the statute embraced a grant of public lands. This result was reached although the Court remarked that the case of the Railway Company and its assigns was a hard one.

Neither is it sound to contend that the act of 1889 "confirms a legislative grant." Nothing can be confirmed which does not exist. There was no land grant in existence prior to the act of 1889. The language of that Act did not expressly or by implication confirm or attempt to confirm anything. It was a new grant. The effect of the decision in the Wade and Peters cases cannot be escaped by the contention that the act of 1889 was merely a confirmation of a previous grant; and we think that the cited decisions of this Court and of the Florida Supreme Court are in point and conclusive.

The quotation from the opinion of this Court in Davis vs. Gray, 16 Wallace 203, does not help appellants' case.

The Court held there that the "real estate of a corporation is distinct from its franchises." This is exactly what we contend, and the decisions of the Supreme Court of Florida cited in the appellees' brief on the motion to dismiss are entirely in accord with the opinion in Davis vs. Gray. Our argument is that when the Legislature announced its intention by the title of the act of 1889 of dealing with the subject of the *franchises* of the Railway Company, it did not and could not thereby indicate or express its purpose to grant public lands to the corporation; because repeated decisions of the Supreme Courts of the United States and State of Florida, both at the time of the passage of the act of 1889 and subsequently, had clearly held that the word "franchises" does not mean "lands" and that the words "lands and tenements" does not include "franchises."

Gibbs vs. Drew, 16 Fla., 147.

Leonard vs. Baylen Street Wharf Co., 59 Fla., 547.

Davis vs. Gray, 16 Wallace, 203.

As stated in the brief on motion to dismiss, by the settled judicial decisions of this State the word "franchises" does not include lands. An act relating to franchises therefore did not relate to or include a grant of lands. "And when the franchises of the corporation were enlarged and extended the land grant was not affected * * * * An Act to incorporate a corporation, and an act to enlarge and extend the franchises of a corporation, are so close in purpose and meaning as to be identical. In one case the corporation is granted; in the other its incorporeal hereditaments, its powers and its corporate purposes are broadened. In the former case the corporation is formed, in the latter the charter or act of incorporation is amended. So, if an act to incorporate cannot include a land grant, neither can an act to amend the corporation contain such a grant."

The decisions of the Supreme Court of Florida upon the construction and effect of the Constitution of the

State being binding upon this Court, there can be no doubt about the unconstitutionality of the land grant provisions of the Special Act of 1889.

See Appellees' Brief on Motion to Dismiss, pages 28-31.

II.

THE BILL DOES NOT SHOW THAT THE LAND COMPANY HAS ASSIGNED TO THE RAILWAY COMPANY ITS TITLE TO THE LANDS IN QUESTION.

The determination of this case upon its merits necessarily involves at the outset an examination of the nature and character of the appellants' title to the lands in controversy. Whether their title be regarded as legal or equitable, it is necessary to determine its basis in order that its validity may be examined and passed on.

In their brief the appellants rest their title upon two separate and distinct theories:

First: The statutory land grant contained in the Act of May 31, 1889.

Second: An assignment from the Land Company of its right and title to the lands in question.

The appellants contend that there is nothing necessarily inconsistent in the assertion of both of these claims at once. This may be true, if there were a complete merger of the two titles, but we think it is clear that the amended and supplemental bill does not allege such a case. The claims of the Land Company and of the Railway Company were distinct in nature and origin. The Land Company had, we believe, a valid claim to such lands as it earned under its contract, and one which was admittedly prior to the claims of the Railway Company. But its title or claim was something distinct and apart from its prior right of selection. It could and did waive its right of selection within the area of land reserved for the satisfaction of its claims, without assigning or conveying its right to the conveyance of an equal acreage elsewhere. The Railway Company might have had a

valid land grant under the act of 1889, and at the same time the Railway Company might have purchased and acquired by conveyance or assignment from the Land Company its entire claim to the lands in controversy (not merely a waiver of the prior right of selection), thereby uniting under one ownership both claims to the same lands. This supposed state of facts does not exist, because it is not alleged in the pleadings and is not supported by an assignment or conveyance from the Land Company. The bill does not allege an assignment or conveyance from the Land Company to the Railway Company; and a careful reading of the pleadings and even the appellants' briefs discloses no clear, definite or unequivocable statement of facts showing that the Railway Company became the successor by assignment or conveyance of the rights of the Land Company in the property in controversy. The importance of the point is that if no assignment exists, the Railway Company's claim to the lands must rest solely upon the Special Act of 1889. If this Act be, as we feel sure it is, unconstitutional, it is evident that the entire foundation of the complainants' title has been destroyed. Therefore, the appellants have found it necessary to construe the letter from the Land Company to the Trustees and the resolution of the Trustees as an assignment of the rights of the Land Company. We think that the transaction in question clearly had no such effect.

The situation of the parties in June, 1891, was that the Railway Company claimed to have completed about fifteen miles of its railroad, and that under the Act of 1889 it was entitled to the conveyance from the Trustees of 3840 acres for each completed mile of the road. The statute required that the lands should be taken from any of the swamp and overflowed lands of the State, the right of selection remaining in the Trustees and not being vested in the Railway Company. The Land Company by its contract with the Trustees had the prior right of selection in a definitely described reservation to satisfy the obligations due or to become due to it by the Trustees under its drainage contract. Clearly, therefore,

under the express proviso of the act of 1889, as well as under the limitations of the prior contractual obligations of the Trustees, the Railway Company's grant could not be satisfied in whole or in part out of the Land Company's reservation without its express consent and approval.

It is evident that the Railway Company applied to the Land Company for the waiver of its prior rights, and that on account of the relations existing between the two corporations and to encourage the further construction of the Railway by obtaining lands under its grant, the Land Company was willing to release its reservation of priority of selection as to certain lands so that the Trustees could convey them to the Railway Company to satisfy its claims. The evident and unmistakable purpose of the transaction was not an assignment by the Land Company to the Railway Company of any of the former's rights, thereby vesting or granting a new title or basis of claim to the lands in the Railway Company, as the successor *pro tanto* of the Land Company; but its object was merely a waiver or release of the rights of prior selection of the Land Company in specific lands which the Railway Company desired to have conveyed to it in satisfaction of its own supposed land grant. The relation of the parties, the nature of as well as the difference between their respective claims and the language of the Land Company's letter and the Trustee's resolution combine to establish this conclusion.

It is certain that the letter from the Land Company to the Trustees (page 46 transcript) did not have the effect of assigning its rights in these lands to the Railway Company. The paper was not an assignment at all. It is true that an assignment might be validly drawn in the form of a letter as well as a deed. But the letter contains no language or expression or phraseology which can be held to import an assignment of the Land Company's claims or rights against the Trustees for any lands earned or to be earned by it. It must be remembered that the Land Company's claim was under an executory contract, and it could not be said at that time that the Land Company would eventually be entitled to any land, or, if it

were, whether the balance of the lands earned by it would exceed those which had already been conveyed to it by the Trustees. It did not appear at that time that the Land Company claimed or that the Trustees admitted that the Land Company was entitled to the acreage claimed by the Railway Company. The letter of the Land Company does not make such a claim, but speaks only of the lands "now reserved" under the drainage contract. If the intention of the Land Company had been to convey or assign its existing or future rights and claims to the Railway Company, it seems clear that some express language giving evidence of that intention would have been used in the letter. However, what the Land Company did was to express willingness to release certain lands from its reservation, in order that the Trustees might convey to the Railway Company so much of the lands in the reservation as might be *due to the Railway Company.* Observe that the letter speaks of lands due the Railway Company, not those due or to be due the Land Company. The word "assign," "transfer," "convey" or other equivalent term is not to be found in the letter. What the letter says is that "this Company is willing and does hereby release so much of the lands now reserved to them under their drainage contract (in certain townships which are mentioned in the letter) as your Honorable Board may convey to said St. Cloud Sugar Belt Railway Company *on account of lands that may be due them"* (that is due the Railway Company on the Railway now constructed.) The manifest effect of this language was a release of the prior rights of selection, and not the transfer of any other or different rights. Hence the Railway Company had no other or different rights after the passage of the resolution than it had before, except that the Trustees agreed to satisfy the Railway Company's statutory land grant with lands out of a specified area instead of elsewhere in the State.

Following the receipt of this letter by the Trustees, they adopted a resolution that the Land Company "has filed with the Board written authority for them to convey to the said St. Cloud Sugar Belt Railway Company

the lands now reserved for said Land Company under its contract" in certain townships. The Trustees did not recite a conveyance, assignment or transfer of the rights of the Land Company. No reference was made in the recitals or the body of the resolution to any attempt on the part of the Land Company to vest in the Railway Company all of the Land Company's claims against the Trustees in respect to the property in controversy. Remembering that the Land Company had a continuing executory contract with the Trustees under which it was to be paid in lands at 25 cents an acre, it seems clear that the Trustees would not have accepted an assignment from the Land Company to the Railway Company without some express act by the former Company agreeing to have the acreage conveyed to the Railway Company charged against the Land Company in its settlement with the Trustees. The Land Company's letter contains no such authority, and the resolution of the Trustees does not refer to the account or settlement. There is nothing in either the letter or the resolution under which it could be contended that the Land Company had consented to be charged or that the Trustees had determined to charge the Land Company with the acreage to be conveyed to the Railway Company. It will not be presumed, in the absence of some clear expression to the contrary, that the Trustees and Land Company intended that this transaction should be in effect of a *pro tanto* assignment of the claims of the Land Company against the Trustees to the extent of the acreage to which the Railway Company was then entitled. Such a violent and unwarranted construction is at variance with the situation of the parties and the language used. In fact, the bill itself alleges (paragraph IX, transcript, page 48), that the action of the Trustees "neither increased nor diminished the obligations of the State," but merely changed the beneficial ownership. This is inconsistent with and destroys the theory of an assignment, because an assignment, added to the existing land grant of the Railway Company, would have united two different claims and allowed them to be satisfied with the conveyance of the acreage of only one

claim. In other words, the assignment theory would diminish the Trustees' obligations by one-half, because they could charge the Land Company with the acreage assigned to the Railway Company, and give the Railway Company only the acreage it claimed under the Act of 1889.

What the Board resolved, however, was not that it would recognize an assignment to the Railway Company of a part of the compensation in lands earned or to be earned by the Land Company, but that it accepted the waiver or release of the prior right of selection of the Land Company, and would satisfy the Railway Company's claim for lands *due it* on account of the construction of its road out of the townships which had been thus released from the drainage reservation. The resolution and recitals inevitably lead to this conclusion. The Trustees referred in their recitals not to the claims of the Land Company or the fact that it was entitled to certain lands; but to the claims of the Railway Company. The recitals set forth that the Land Company had filed with the Trustees' written authority for them to convey to the Railway Company the lands reserved for the Land Company. The "written authority" referred to in these recitals was the release of prior rights of selection by the Land Company. The Trustees did not recite that the Land Company had assigned its right to any *lands* to the Railway Company.

In the body of the resolution the Trustees stated that they would, "under the authority aforesaid," convey to the Railway Company the "quantity of land to which it is now entitled." "The authority aforesaid" was the letter from the Land Company releasing its prior rights of selection. Nothing is said about the land claims of the Land Company against the Trustees. No provision is made for charging the acreage to be conveyed against the amount earned or to be earned by the Land Company under its drainage contract. If the Railway Company had not been entitled under the existing statute, as construed by the Trustees at that time, to a conveyance of the public lands in satisfaction of its claims, it would have

been entirely unnecessary to refer to these grants in the recitals of the resolution. The Land Company could have conveyed or assigned its title in whole or in part to any individual or corporation, and such an assignment would have been valid without reference to a statutory land grant. The argument to the contrary on page 35 and following of the appellants' brief, is, we think, not sustained by the transaction as stated and set forth in the amended and supplemental bill. The Land Company did not release anything *to* the Railway Company, if the word "release" is intended as connoting an assignment or transfer of a present or future claim against the Trustees for lands earned by the Land Company. What the Land Company said was that the Trustees "may convey to the St. Cloud Sugar Belt Railway Company *on account of lands which may be due them on railway now constructed.*" This does not mean on account of lands earned by the Land Company. On the contrary, it is an express declaration that this conveyance must be on account of the Railway Company's claims and not on account of the Land Company's contract. The argument that the resolution of the Trustees "was a valid and definite declaration and action separating a certain quantity of land from the total 825,056 acres reserved for the Land Company and agreeing to hold them under exactly the same trust for the benefit of the Railway Company, thus solving at the expense of the former the question of satisfying the claim of the latter," (appellants' brief, page 37) seems to us clearly at variance with the language of the letter of the Land Company and the resolution of the Trustees.

It should be observed that the amended and supplemental bill (paragraphs VII, VIII and IX) does not allege, clearly or otherwise, that the title, whether legal or equitable, of the Railway Company and its grantees is based upon an assignment of the rights of the Land Company. The letter of the Land Company and the resolution of the Trustees are set out in full in paragraph VII. These are all the *facts* alleged. All of paragraph VII consists of arguments and legal conclusions, except the

last sentence which refers to another point. Paragraph IX is merely argumentative. As we understand it, no other allegation of the amended and supplemental bill of complaint relates to the point under discussion. The argument or conclusions (paragraph VIII) are that by the action and resolution of the Board, the Board contracted with the Railway Company to substitute it for the Land Company as the grantee and *cestui que trust* of the lands earned and agreed by said Board to be conveyed to the Land Company, and to hold in trust and convey said quantity of lands to the Railway Company, and that thereby the Railway Company became the equitable owner instead of the Land Company of 59,136 acres of land taken from odd numbered sections in said townships. Paragraph IX argues that the action of the Trustees neither increased nor diminished the obligations of the State, but merely made the Railway Company instead of the Land Company the *cestui que trust* of said 59,136 acres, and reduced by the same amount the acreage held in reserve for the benefit of the Land Company. Neither the facts nor the conclusions alleged in the amended and supplemental bill are that the Railway Company became the successor by transfer or assignment of the rights and title of the Land Company. This is a significant and important omission.

The title of the appellants cannot be rested upon the claims or rights of the Land Company. All of the allegations of the amended and supplemental bill relating to the Drainage Contract of the Land Company are pertinent only so far as they explain the existence of the Drainage Reserve and the prior rights of selection of the Land Company derived therefrom. The right of the Land Company to have lands conveyed to it by the Trustees in payment of drainage work under the compromise contract never passed to the Railway Company, and no facts are alleged in the bill showing that the appellants rested or intended to base their case upon a transfer of such rights from the Land Company. Hence, it results that the claims of the appellants must find their sole foundation, if any, in the land grant contained in the

Special Act of 1889, and the attempt, as an afterthought, to give the amended and supplemental bill a double aspect must fall, because the bill fails to state any facts or even appropriate legal conclusions which show that the title and rights of the Land Company have ever passed to the appellants' predecessor in title.

III.

THE BILL DOES NOT ALLEGE PERFORMANCE OF THE CONDITIONS OF THE SPECIAL LAND GRANT OF 1889.

The land grant contained in the special act of May 31, 1889, was subject to the condition that the Railway Company was not entitled to have conveyed to it any lands which were already appropriated to other existing corporations.

The amended and supplemental bill of complaint fails to allege facts showing compliance with this condition. The grant of lands in the Act of 1889 was expressly declared to be conditional, and, by proviso and express limitations, the grant was declared to be effective only upon the happening of the events and performance of the numerous conditions contained in Section Five and Section Seven, only a part of which are referred to in this brief.

In case of deficiency of lands within the six mile limit, the grant was to be made up from other lands owned or acquired by the State "which are not appropriated to other existing corporations." The bill does not allege that the lands involved in this case were not appropriated to other existing corporations, or in any manner negative this condition of the grant. It must be remembered that the Trustees of the Internal Improvement Fund by the Act which created that body, approved January 6, 1855, and many subsequent amendatory Acts of the Legislature of Florida, were vested with the title to and management of the great body of lands known as "Swamp and Overflowed Lands" of the State. The Trustees were authorized to apply and dispose of these lands for the

purpose of reclamation and drainage, and in that connection to sell the lands and use the proceeds for the expense of the administration of the fund. These duties were the primary obligations of the Trustees.

Trustees of I. I. Fund vs. Root, 59 Fla., 648.
Trustees of I. I. Fund vs. Root, 63 Fla., 666.

Furthermore, the Legislature by general and special Acts passed long prior to the Act of May 31, 1889, had granted lands to other railroad and canal companies. These grants were prior in time and effect to the appellants' claims. That the Trustees had made at least one drainage contract payable in land prior to the Act of 1889, appears by the amended and supplemental bill. It cannot be assumed that other contracts of like nature had not been made by the Trustees, which would create obligations substantially equivalent to an appropriation "to other existing corporations." The Legislature recognized these conditions in imposing the limitations upon the Railway Company's special land grant. But the expense of the management of the fund imposed upon the Trustees the duty to sell lands whenever they found it necessary, which duty, under the decision of the Supreme Court of Florida, was paramount to the satisfaction of any special railroad land grant. Therefore, the express conditions of the Act of 1889 and the general nature of the statutory powers and duties of the Trustees make it necessary that facts should be averred showing that the lands claimed by the appellants were not already appropriated to other existing corporations, or conveyed or sold to raise money to pay the expenses of the Trustees or satisfy prior grants or contracts. The amended and supplemental bill of complaint fails to negative the express condition of the Statute. It does not allege that the lands were not conveyed or sold to raise money to pay the expenses of the fund or to satisfy a prior claim, contract or grant.

The Trustees were vested with wide discretionary powers by the Act of 1855 and subsequent legislation.

Managing and controlling a fund consisting of many millions of acres of land, it was essential that they should have the right to apply and dispose of the property in such manner as in their opinion and best judgment the obligations of the fund, whether created by special land grants, drainage contracts or necessary expense of management, could be wisely discharged. The Act of 1889 did not grant lands in any particular locality, and the right of selection must necessarily remain with the Trustees. In their efforts to reconcile and adjust conflicting claims against the fund they must possess and retain broad discretionary power of control or disposition of the property which the Courts will not review. To do otherwise would require the Courts to take into their control and management the entire fund, with all of its extensive burdens and obligations growing out of fifty years of Legislation and drainage contracts.

The express condition of the Act of 1889 and the nature of the fund clearly require that the appellants should allege definitely and issuably that the specific lands which they seek to recover in this case shall be alleged to be free of all obligations to existing corporations and of all charges or liens which constitute prior claims, and also that the property in question is not necessary or has not been disposed of for some particular purpose connected with the administration of the fund itself. The technical rules of pleading require the appellants to negative the exception to the alleged grant. This they have failed to do; and, without consideration of the broader questions here discussed, it is sufficient to point out that the amended and supplemental bill fails to state a case, because it fails to allege that the lands claimed have not been appropriated to other existing corporations.

IV.

THE ADMINISTRATIVE DISCRETION OF THE TRUSTEES TO SELECT AND CONVEY THE LANDS NESESSARY TO SATISFY APPELLANTS' GRANT WILL NOT BE JUDICIALLY REVIEWED OR INTERFERED WITH.

Under the legislation defining the powers of the Trustees of the Internal Improvement Fund commencing with the Act of January 6, 1855, the Trustees were vested with broad powers and discretion. It is impossible within reasonable compass to review the purposes and objects of the Internal Improvement Act, but it is sufficient to say that the Trustees had among other powers the following:

(1) To use the lands or the proceeds of their sale to drain and reclaim the swamp and overflowed lands of the State.

(2) To grant lands in aid of the construction of railroads and canals along the routes prescribed by the Act of 1855 and subsequent statutes.

(3) To pledge the lands for the payment of interest on bonds of certain railroad companies constructed under the Act of 1855, with the approval and according to the plans of the Trustees.

(4) To sell the lands for the purpose of paying the expenses of the fund and meeting the obligations of the Trustees above mentioned and otherwise provided by law.

While the Trustees were authorized, and in some cases directed, to use the funds for other purposes, the foregoing is a general statement of the objects of the trust. Numerous statutes have been passed by the Legislature of Florida from time to time granting lands out of this fund to aid in the construction of railways. All of these statutes granted lands within the alternate sections within specified limits and in some cases with an

additional acreage grant of varying quantities per mile to be satisfied out of any available lands in the fund. Millions of acres of land had been embraced in these railway land grants. It has been the policy of the Trustees to reconcile, as far as practicable, the sometimes conflicting and inconsistent claims of the statutory land grantees, and at the same time to carry out the duty of using so much of the fund as necessary to effect the reclamation and drainage of the territory involved. The complications arising from these conditions have frequently placed upon the Board the solution of difficult problems, and the Supreme Court of Florida in construing the Legislation on the subject has held several times that "while acting within their statutory authority, the decisions of the Trustees of the Internal Improvement Fund, when exercised in good faith and with due regard for the trust committed to them, will not be controlled by the Courts."

Trustees of I. I. Fund vs. Root, 59 Fla., 648.

It has also been held that a statutory land grant in aid of the construction of a railroad does not prohibit the Trustees from selling and conveying lands in payment of the expense of selecting and managing the lands of the fund, or for any purpose having a prior right to the legislative land grant. This was held in a case which decided that a deed of lands which formed a part of the fund to pay the expense of selecting the lands claimed under the Act of Congress was valid as against a legislative railway land grant of the alternate sections within the six mile limit.

Yager vs. McNeill, 60 Fla., 400.

The facts alleged in the amended and supplemental bill of complaint show that, if the appellants' special land grant is constitutional, they were not thereby given any particular lands or the right to select lands. They were granted a subsidy in lands to be selected and conveyed by the Trustees. This legislation did not interfere with the control of the fund by the Trustees, or their discretionary powers in adjusting and reconciling the claims

against the lands which constituted the fund. In view of the objects of the fund and the nature of the charges upon it, it is evident that the existence of very broad discretionary powers in the Trustees are essential. The decisions of the Supreme Court of the United States have sustained similar discretionary powers in the Land Department of the United States. The cases on the subject are so numerous and so well established that it is unnecessary to refer to more than a few of them.

Brown vs. Hitchcock, 173 U. S., 473.

U. S. vs. Schurz, 102 U. S., 378.

Plested vs. Abbey, 228 U. S., 42.

The peculiar nature of Internal Improvement Fund of the State of Florida with all its statutory and contractual obligations renders the application of the rule under consideration even more essential than in the case of management of public lands of the United States, where the disposition of lands are more clearly defined by law and the powers of the Land Department are more restricted than in the case of the Internal Improvement Fund of Florida.

It is likewise a well established principle of the Public Land Laws of the United States that so long as the legal title remains in the Government all questions of the right to the lands must be determined by the Land Department itself and not by the Courts. The point was stated in Brown vs. Hitchcock, supra, as follows:

> "But what we do affirm and reiterate is that power is vested in the Departments to determine all questions of equitable right or title, upon proper notice to the parties interested, and that the Courts must, as a general rule, be resorted to only when the legal title has passed from the Government. * * * * The naked proposition upon which plaintiff relies is that upon the creation of an equitable right or title in the State the power of the Land Department to inquire into the validity of that right or

title ceases. That proposition can not be sustained. Whatever rights, equitable or otherwise, may have passed to the State by the approval of List No. 5 by Secretary Teller, can be determined and should be determined in the Courts of Oregon, *State or Federal,* after the legal title has passed from the Government."

It is nowhere alleged in the bill that the appellants have not had notice of the action of the Trustees which is complained of, or that they have been denied an opportunity to be heard in respect to the action of the Trustees in rejecting the equitable title which the appellants claim. In the absence of such an allegation, lack of notice or hearing will not be presumed. Hence, under the decision of this Court the action of the Trustees, which is equivalent to a decision of the Land Department of the United States, will be controlling.

But the Trustees of the Internal Improvement Fund of Florida had no statutory power to bind their successors in office by the resolution adopted June 22, 1891, and set forth in paragraph VII of the amended and supplemental bill of complaint. At the time of the passage of the resolution the State had only a claim upon or at most the equitable title to the lands in controversy. The lands had not been surveyed or patented. It cannot be said that the lands had accrued to the State within the meaning of the 5th Section of the Act of May 31, 1889. The Railway Company had merely a claim for a certain acreage of lands without the right to have these lands located in one place rather than another. The Trustees were under the necessity of paying their debts and expenses and of reconciling any conflicting claims and satisfying numerous statutory land grants, as well as devoting so much of the fund as might be required to the reclamation of the lands. In these conditions the Railway Company applied for a location of its grant. The Trustees did not convey or attempt to convey any lands in satisfaction of the claim. Without any consideration moving to the Trustees, they adopted a resolution stating that they

would at some future time convey to the Railway Company the acreage of lands to which it was entitled out of a designated territory which contained more lands than was necessary to satisfy the claim. This action of the Trustees did not bind their successors in office, because:

(1) It was not supported by any statutory authority which gave the existing Trustees the power to promise to convey specific lands in future. While they had the authority to *convey* any available lands which they considered proper in the administration of their trust, yet they had no authority to hamper the decision of their successors by a promise to convey lands which had not yet been acquired. To support such authority as this would require specific and express statutory sanction, which does not exist. All the powers of the Trustees are statutory, and no power will be presumed which does not find its support in express language or necessary implication from the language used.

(2) There was no consideration for the action of the Trustees and no contract was created thereby. As observed elsewhere in this brief, the rights of the Railway Company after the passage of this resolution were no greater than prior to its passage. The Trustees could not determine by resolution a policy of administration which would be binding upon their successors in office, although they might have entered into a contract within their statutory powers, based upon a valid consideration, which could be enforced. Their action in this case did not measure up to the requirements of a contract based upon a valid consideration and authorized by statute.

(3) The resolution of the Trustees was not in fact an agreement to convey any lands. It was the determination of a purpose to select the lands eventually to be granted in satisfaction of the Act of 1889 out of a certain limited but larger area. The action of the Trustees did not become a completed act, either by a conveyance or a contract to convey. It was in the nature of an executory agreement or promise to do something in the future. The decision or policy, or the contract or promise, whatever it may be called, was not complete but inchoate; and it

lacked the necessary element of finality, because it still left open to the Trustees or their successors the actual selection of the lands which were to be conveyed. It cannot be said, therefore, that the resolution of the Trustees was such a completed act as gave any vested rights, even if what they attempted was within their statutory powers.

It is a matter of comparative indifference whether the appellants' case be regarded as an action to enforce a trust or an action for specific performance. The same principles apply to either theory. If the transaction is void as a trust, it is void as a contract; and the converse is equally true. In neither case can the right of action, if any, be enforced, unless the court assumes the power to select and set apart the lands which are sought to be recovered by the appellants. If the Court will not attempt by its decision to control the discretion of the Trustees, or in effect to take the discretion of the Trustees away from them and exercise that power itself, then it cannot be judicially known that the Trustees will, when they exercise their discretion, select the lands which are here sought to be recovered. The appellants' claim covers 59,136 acres out of an area which embraces 65,594 acres. The Trustees had the right to make this selection in any manner they pleased. The resolution, being both ultra vires and incomplete, did not prevent succeeding Boards of Trustees from satisfying the acreage grant out of any available lands in the Fund. The appellants could have no claims to any particular lands in the townships mentioned in their amended and supplemental bill. What they had was a general claim for a certain acreage and no more. The sum of the discussion is that unless the courts undertake the management of this fund, the decisions of the Trustees cannot be judicially controlled, in which event the basis of complainants' cause of action is gone.

V.

APPELLANTS' CLAIM IS NEITHER A LEGAL NOR AN EQUITABLE TITLE, AND AS TO THE LANDS IN CONTROVERSY IS TOO INDEFINITE AND UNCERTAIN TO BE ENFORCED.

The appellants call their claim an "equitable title," and cite and discuss many cases holding that an equitable title is "sufficient for the creation and enforcement of a trust." It seems to us unnecessary to discuss this proposition or to distinguish the cases relied upon. It is sufficient to say that, as we understand the law, the appellants' claim is not an equitable title, and the principles applicable to such a title are not pertinent to this case.

Whether the title claimed be legal or equitable, it must relate to some definitely described or ascertainable property. In this important respect appellants' claim of title fails. A title is merely the right by which specific property is owned. The title may be legal or equitable, or to the whole estate or a lesser estate, or to a definite share or interest; but in every such case the subject of the title must be known and ascertainable. Where, as here, the claim is merely for a certain acreage which the owner has promised to convey out of a larger acreage of lands definitely described, the claim is a *chose in action*, and not a title of any kind. If the Trustees had, for instance, agreed in writing for a valuable consideration, to convey to appellants 600 acres of land out of a specifically described section containing 640 acres, and the purchase price were paid, such a contract under the decisions of the Florida Court (Patrick vs. Sears, 19 Fla., 856) would be void as a contract to convey or as a trust. The present case is exactly the same in principle.

It results that the claim is void as a *title*, either legal or equitable, and the appellants have only such rights to a certain acreage as they possess as the successors of the Railway Company under its special land grant. If the grant is valid, they may require the Trustees to select

and convey to them the acreage to which they are entitled, or recover the value in damages. But they certainly cannot enforce a claim of title to the specific lands here in controversy, because their claim is "too vague and uncertain to be enforced, and the defect is such that parol proof cannot aid the instrument"—in this case the resolution of the Trustees.

Patrick vs. Sears, 19 Fla., 856.

See also Appellee's Brief on Motion, pages 17-18.

The application of the appellants' contention to the case of The Florida Everglades Land Company brings out the weakness of the claim most clearly. The appellee, The Florida Everglades Land Company, holds title by a chain of deeds from the Trustees. The Trustees have full power to convey and their deed is prima facie evidence of title in their grantee.

Groover vs. Coffee, 19 Fla., 61.

The Trustees have made no other deed to these lands. The conveyance to Vans Agnew, under whom The Florida Everglades Land Company holds, is not impeached and is presumptively valid. Now, after the title has reached this appellee by a succession of conveyances, the appellants assert an "equitable title" based on an unsatisfied land grant which they say was located upon the lands of The Florida Everglades Land Company by a resolution of the Trustees passed more than twenty years before this suit. But the resolution described no lands. It is at best merely a promise to select and convey a stated acreage out of the townships in which appellee's lands are situate. Upon this vague and indefinite claim it is sought to hold this appellee as trustee for appellants. All this is done without alleging the insufficiency of the fund to satisfy the grant out of other lands, and without any showing that the grant will fail without taking the appellee's property away from it. For these reasons it seems inappropriate to call the appellants' claim an "equitable title."

As between appellants and the Trustees the case is different; for, if the acreage grant is valid, it may be enforced, in the proper action and forum. But The Florida Everglades Land Company has bought lands from the Trustees, which they had the power to convey, without any other notice of appellants' rights than the record of the deeds from the Railway Company to Dunne and Disston. No actual notice is charged of these deeds or of the Trustees' resolution of 1891 or of appellants' claims in any form. Constructive notice cannot be imputed of the existence of the Trustees' resolution of 1891. Probably the question of notice is not controlling at this stage of the case, but it remains true that if The Florida Everglades Land Company is held as a Trustee of these lands it must be done by the strict application of clearly established principles of equity in the face of a resulting hardship. Hence if the "equitable title" so confidently relied upon is to be judicially recognized, it must be by virtue of a clear and unquestionable right which this appellee must have known or be presumed to have known.

But even if the Trustees had executed a formal written contract with the Railway Company in the language of the resolution, and the contract had been duly recorded in the public records of the County where the lands lay, so that the extent of appellants' rights could have been clearly known and definitely measured by this appellee before it purchased, would not appellee been justified in regarding the contract as void for uncertainty under Patrick vs. Sears, supra? And is not the case under the resolution much weaker than that of the supposed recorded contract?

VI.

THE AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT IS WITHOUT EQUITY.

Closely akin to the matter discussed in the next preceding paragraph, is the question whether the complainant's remedy is at law or in equity, and also whether the relief prayed is of such a nature as can be granted by

the Court. It is submitted that the appellants have not shown a valid trust or contract to convey. They have not alleged facts which support their claim to the lands in controversy or to any specific lands at all. Their claim under the Act of 1889 is merely to receive from the Trustees conveyance of a definite acreage of lands, the location of which must be selected by the Trustees and not by the appellants. Hence there cannot be specific performance or the enforcement of a trust. The only remedy of the appellants is at law either by mandamus to require the Trustees to select and convey lands, out of the Fund sufficient to satisfy the grant, or by an action for damages recoverable out of the fund for failure or refusal to convey. This position is emphasized by the relief sought by the amended and supplemental bill. It is prayed that each of the defendants, other than the Trustees, be required to surrender a certain percentage of their lands without distinguishing and locating the lands claimed from each defendant. If the parties cannot agree on the selection, the appellants ask that a Master be appointed to select the lands from those conveyed to the defendants which shall be held subject to the appellants' claim. It is submitted that a Court of Equity has no power to go into a calculation by fractions or decimals to decide how much land should be taken from one defendant and how much from another in satisfaction of an acreage claim. The appellants' title is either better than the appellees or else it is invalid. In other words, if the appellants have a perfect equitable title to specific lands, they are entitled to all of the lands which have been conveyed by the Trustees to The Florida Everglades Land Company and other grantees who can be shown to have taken with notice of the trust or of the equitable title. The court cannot go into the complicated calculations suggested by the prayer of the bill in order to apportion the loss among the defendants. In fact this suggestion destroys the theory of a trust or equitable title; and the suggested method of reaching "an equitable result under all of the circumstances" (appellants' brief, page 25) exposes the weakness of the theory of the case. The

complainants evidently appreciated the difficult and unusual character of the relief prayed, and in the alternative they ask that, if the Court decline to apply the percentage rule, it apply the inverse order of alienation or such other rule as may do justice and equity. It is evident that the difficulties of the case were too great for ordinary equitable remedies. The fact is, that the complainants, having no right to any specific lands, can only recover damages or compel the exercise by the Trustees of the discretion which they possessed. *It is not alleged in the bill that there are no lands remaining in the fund sufficient to satisfy the complainants' claim in full, and it will not be presumed that such is the case.* Hence adequate relief can be obtained by compelling the Trustees to select and convey lands from other parts of the State, or by damages for a refusal to convey.

VII.

THE APPELLANTS' RIGHTS ARE BARRED BY LACHES.

From the time of the passage of the resolution of the Trustees on June 22, 1891, to the filing of the original bill of complaint on March 9, 1912, the appellants and their predecessors in title did nothing to enforce their claim. For more than twenty years the claim was dormant. The lands were not patented until April 29, 1903, and the complainants, in order to excuse their laches, have alleged that they did not know of the existence of the patent, because it had not been recorded in the land records of the Counties where the properties were situated. There has never been a law in the State of Florida requiring a patent of lands from the United States to the State to be recorded. The complainants cannot claim any benefit from the failure of the Trustees to record the patent. Allegations of ignorance in respect to things, a knowledge of which is easily ascertainable, are insufficient to excuse laches.

McQuiddy vs. Ware, 20 Wall., 14.

The records of the General Land Office and of the Local Land Office in the State of Florida showed that the lands had been patented, and this information was at all times available to and readily obtainable by the appellants. The records of the Trustees of the Internal Improvement Fund and of the Commissioner of Agriculture, in whose custody the land records of the State are kept, would have supplied the same information to the appellants on application or inquiry. How long the complainants' ignorance of the issuance of the patent continued is not alleged in the pleadings, but for more than nine years after the patent was issued and delivered the complainants failed to take any steps to enforce their rights.

Meanwhile, in December, 1908, the Trustees sold a part of the lands in controversy to the predecessors in title of The Florida Everglades Land Company, and about four years after that time this suit was brought. It is true that in 1892, one year after the adoption of the resolution by the Trustees, the Railway Company conveyed an interest in the lands in question to Henry Disston and the remaining interest to John J. Dunne. These deeds were recorded, and the owners of the claim continued as stated until a conveyance was made on January 15, 1912, by John J. Dunne to the appellant, The Manila Investment Company. The execution and record of these deeds are the only transactions which are stated in the amended and supplemental bill of complaint to have occurred with regard to the title on the part of the appellants during a period of more than twenty years. No copy of the resolution of the Trustees of June 22, 1891, was recorded in the public land records of Dade and Palm Beach Counties. While there is no law requiring this to be done, neither was there a law requiring the record of United States land patents. It remains that no public or record notice of the appellants' title was given to persons dealing with the lands after they had been patented by the United States to the State of Florida and conveyed by the Trustees to the several defendants in this cause. During this period of acquiescence and silence on the part of the appellants,

the Trustees have made conveyances to divers parties, and the title to the lands passed through several hands and has become vested in parties having no connection with the original purchases from the Trustees.

If the contentions of the appellants are correct, their rights to the lands in controversy became perfect when the lands were patented to the State of Florida by the United States. They rely upon the resolution of June 22, 1891, which they construe to require the Trustees to convey the legal title whenever the lands were patented. The contention is that the equitable title vested in the Railway Company at the time of the passage or adoption of the resolution, although the right to require the enforcement of the trust did not accrue until the patenting of the land. In other words, when the lands were patented, the trust, by its own terms, was executed and thereafter became a mere dry trust. Hence it follows that the appellants' right of action became perfect, according to their own view of the case from the moment that the legal title passed from the United States to the State of Florida by the patent of April 29, 1903. Why no action was brought from 1903 until March 9, 1912, is not satisfactorily explained. The delay cannot be excused by the appellants' ignorance of the existence of a patent which conveyed to the State more than three million acres of lands and was a subject of the widest possible public interest in the State at the time; so much so, in fact, as to become a part of the public history of the State. Not only that, but the patent was a transaction affecting the appellants' own claim of title to specific lands, and the appellants cannot be heard to say that they were ignorant of what was happening in regard to their own title.

The record does not show the extraordinary and enormous increase in value of Everglades Lands during the period from 1903 to 1912, but this fact is so generally known and applies to so large and important a territory and is so intimately associated with the public improvements and drainage operations of the State of Florida, that the sudden and great increase in value of the property must be judicially known. The works of drainage

and reclamation carried on by the Trustees under public laws of the State of Florida upon the very lands claimed in this litigation, are matters of public knowledge; and their effect has been to render these lands accessible and valuable when before that time they were inaccessible and of little value. The records of the Trustees and the public official reports of the State of Florida show that the State has spent approximately two and a half million dollars, and has embarked upon contracts involving as much more, for the purpose of improving the lands and territory involved here.

All of these facts emphasize the appellants' laches, and make it more inequitable for them to attempt to enforce against The Florida Everglades Land Company, and other purchasers in good faith, their alleged equitable title which they have allowed to remain dormant for more than nine years. Meanwhile, the Trustees were asserting, and conveying a hostile title which was passing through the hands of numerous purchasers and the lands were being drained, improved and greatly increasing in value. Under these circumstances, the appellants' right to require the Trustees to select and convey the lands here involved must be regarded as having been abandoned.

Moran vs. Horsky, 178 U. S., 205, 208.

Felix vs. Patrick, 145 U. S., 317.

Galliher vs. Cadwell, 145 U. S., 368.

Simmons vs. Burlington, Etc. Ry. Co., 159 U. S., 278, 291.

Wagner vs. Baird, 7 Howard, 234, 258.

Speidel vs. Henrici, 120 U. S., 377.

Abraham vs. Ordway, 158 U. S., 416, 421.

Where one who has an inchoate title to property and abandons it for fourteen years, permitting others to acquire the title and deal with it as theirs, his contention

does not appeal to the favorable consideration of a Court of Equity.

Moran vs. Horsky, (supra).

The numerous decisions of this Court on the subject of laches and the abandonment of equitable titles have established the principles applicable to these conditions with such certainty and clearness that it is unnecessary to review or apply the cases.

While laches has not been pleaded or raised as a defence, "the recognized doctrine of Courts of Equity to withhold relief from those who have delayed the assertion of their claim for an unreasonable length of time may be applied in the decision of the Court, even though the laches are not pleaded or the bill demurred to."

Willard vs. Wood, 164 U. S., 502, Citing:

Sullivan vs. Portland and K. R. Co., 94 U. S., 806, 811.

Lansdale vs. Smith, 106 U. S., 391, 394.

Badger vs. Badger, 2 Wall, 87, 95.

The same rule exists in Florida.

Geter vs. Simmons, 57 Fla., 423, 430.

It is submitted that the facts alleged in the amended and supplemental bill of complaint show that a Court of equity will not entertain or enforce the alleged equitable claims of the appellants, which have not only become stale through lapse of time and inexcusable delay, but which may be judicially regarded as having been abandoned by the appellants.

CONCLUSION.

It is submitted that the appellants have not stated a case which involves a federal question, and that the decree of the District Court dismissing the bill for lack of jurisdiction should be affirmed. If, however, this Court should uphold the claim of jurisdiction and reverse the decree appealed from, we contend that the District Court should be directed to sustain the motion on the remaining grounds and to dismiss the bill on the merits.

E. J. L'ENGLE,
Of Counsel for The Florida Everglades
Land Company.

MANILA INVESTMENT COMPANY *v.* TRAMMELL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 250. Motion to affirm or dismiss submitted October 12, 1915.—Decided November 1, 1915.

Mere breach of contract on the part of state officers does not amount to a taking of plaintiff's property without due process of law in violation of the Fourteenth Amendment.

Where the allegation of the bill relied on to give jurisdiction shows mere breach of contract on the part of state officers the case does not present a real and substantial controversy involving the construction or effect of the Federal Constitution and the District Court does not have jurisdiction on that ground.

THE facts, which involve the jurisdiction of the District Court of the United States in cases involving constitutional questions, are stated in the opinion.

Mr. N. B. K. Pettingill and *Mr. Arthur F. Odlin* for appellants in opposition to the motion.

Mr. Thomas F. West, Attorney General of the State of Florida, *Mr. E. J. L'Engle* and *Mr. P. H. Odom* for appellees in support of the motion.

Memorandum opinion by MR. JUSTICE DAY, by direction of the court.

This case was begun in the District Court of the United States for the Southern District of Florida, upon a bill praying to have the title to certain lands decreed to be held in trust for complainant by the Board of Trustees of the Internal Improvement Fund of Florida, and to recover lands deeded to others but likewise held in trust for complainants. The court below dismissed the bill for want of jurisdiction.

An examination of the bill shows that the ground of recovery rests upon the allegation that the trustees contracted to convey the lands in question to the complainants, and afterwards, by formal resolution, the Board repudiated its former action, and refused to recognize the alleged trust, and declared the complainants' title null and void. Complainants contend that this action by the trustees, as an agency of the State, in repudiation of its former action and the conveyance of part of the land to others in violation of the trust, constituted a taking of its property without due process of law, in violation of the provisions of the Fourteenth Amendment. This is the only ground of Federal jurisdiction insisted upon.

The case presented no real and substantial controversy involving the construction or effect of the Federal Constitution. The allegations relied upon to give jurisdiction show a breach of contract merely and bring the case within the principles decided by this court in *St. Paul Gas Light*

Co. v. *St. Paul*, 181 U. S. 142; *Dawson* v. *Columbia Avenue &c. Co.*, 197 U. S. 178; *Shawnee Sewerage Co.* v. *Stearns*, 220 U. S. 462; *McCormick* v. *Oklahoma City*, 236 U. S. 657.

Affirmed.